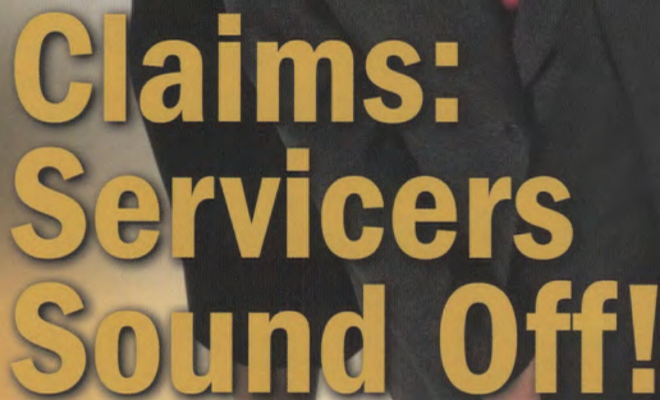
January/February 2006

TitleNews

Official Publication of the American Land Title Association



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- ALTA Introduces Updated Arbitration Rules
- Recent Developments in 1031 Exchanges
- LTI Online Training a Big Hit
- Consumer Awareness Campaign Enters Fourth Year

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TitleNews

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A Message from the Abstracters & Title Agents Section Chair

It's Time to Plan For Another Year of Challenges

As the New Year gets under way, it's time to start planning and preparing for the next set of challenges in the title insurance industry and your business.

Intense competition, shrinking margins, changing customer behavior patterns, regulatory scrutiny, aggressive price competition, saturated markets, and technological advances are but a few of the business challenges that we will continue to endure. Personal growth and development challenges can be added to the list.

To meet and exceed forecasts and expectations, smart business people and professionals develop a plan. Business plans, marketing plans, financial plans, and strategic plans all provide a road map used by professionals to follow a course and to take defined steps toward reaching goals and objectives.

I encourage you to include ALTA in your personal and professional business plans. What better way to face the challenges of tomorrow than to do so with your fellow title professionals?

One of the biggest ALTA challenges facing the abstracter and agent community was presented to us by our own title insurance underwriters. The five largest underwriters have challenged the agent and abstracter community to raise funds for the 2006 Public Awareness Campaign. They have agreed to match dollar for dollar ALL contributions raised by the agent community. Any contribution made by March 31, 2006, will be matched. This is extremely important since the Public Awareness plan for the year is to target regulators and legislators to educate them about the critical role that we play in the real estate settlement process. It is incumbent upon all agents to contribute the maximum amount possible since every dollar we contribute is worth two with the underwriter match.

You should also *plan* to attend the 2006 ALTA Federal Conference March 7–8, 2006, in Washington, DC, and meet with your legislators and federal regulators who pass rules and laws that affect your business. *Plan* to attend the ALTA Tech Forum 2006 April 30–May 2 in Las Vegas in order to get the competitive edge for sales, marketing, and operational technology. And it's never too early to *plan* to attend the ALTA 2006 Annual Convention October 11–14 in San Francisco.

You have the responsibility to manage your time, make the right choices, and execute your *plan* to grow your business in the coming year. You must take the necessary steps to ensure your personal and professional growth as well. You should *plan* on having ALTA help you achieve your goals and objectives by utilizing the many resources and programs that it provides. The benefits you receive will enhance your knowledge of the industry and the ability to run a successful business.

That's your *plan*, isn't it?

Greg Kosin

TitleNews

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ALTAnews

ALTA/ACSM Survey Standards Revised

ALTA and the National Society of Professional Surveyors have adopted newly revised general ALTA/ACSM standards for surveys effective January 1, 2006. The standards were last updated in 1999. NSPS is a member company of the American College of Surveying and Mapping (ACSM) and responsible for the standards from the surveying side. The two groups developed revisions over the past two years based on comments, concerns, and questions from surveyors.

In addition to several smaller changes to the standards, the most significant change is a further revision in the accuracy portion of the Survey Standards. These standards have been substantially revised to eliminate the so-called "Urban" survey standards in favor of a revised "Positional Accuracy" standard, which has meaning with the engineering world of surveyors. To see a comparison of the 1999 and 2005 standards, visit www.acsm.net. The full 2005 updates are also available on ALTA's Web site.

Next Small Agents and Abstracters Forum Planned

The Small Agents & Abstracters Forum has set the date for its third meeting: February 18-19, 2006, at the Marriott Kansas City Airport. The Forum is designed as an information-exchange meeting for title insurance agents and independent abstracters who have small- to medium-size operations.

Approximately 25 agents and abstracters attended the most recent Forum. To find out more about the Forum and to register, go to the Meetings button on ALTA's home page and click on Register Now.

calendar

ALTA Events

February
18–19
Small Agents and Abstracters Forum
Marriott, Kansas City, MO

March
5–8
2006 Federal Conference
The Fairmont, Washington, DC

April
April 30–May 2
Tech Forum 2006
Mandalay Bay Resort & Casino, Las Vegas

State Conventions

February
10–11
Alaska's 2006 Annual Conference
Girdwood, AK

April
3–5
California's 2006 Annual Conference
La Jolla, CA

Thank-You Minnesota!

A special thank-you to the Minnesota Land Title Association for its contribution of $2,500 to the ALTA Public Awareness Campaign. This contribution will be needed in 2006 for ALTA to continue educating legislators, regulators, lenders, real estate agents, and consumers about the value of title insurance.

Dues Notices in Mail

By this time, you should have received your 2006 ALTA dues invoice. Dues are due January 31, 2006. If you have not received an invoice, contact anna_romero@alta.org. Please note that the dues invoice has a line for you to make a contribution to the ALTA Public Awareness Campaign. It is vitally important that the 2006 Campaign continue the momentum of the last three years. In 2006 the campaign will increase its focus on legislators and regulators. If you have any questions about the campaign, contact lorri_ragan@alta.org.

ALTAnews

Article Library Helps Your Marketing Efforts

To help you market your company in local newspapers, ALTA has created a Web site Article Library as part of the Public Awareness Campaign. Add your byline to the articles and submit them to local newspapers to establish yourself and your company as experts on title topics. New articles will be added quarterly. The articles can be found in the Public Awareness Campaign section of the ALTA Web site. Look for the green button on the right-hand side of the home page.

ALTA 2006 Federal Conference Promises to Be Hot

Plan to be in Washington on March 7-8, 2006, to attend ALTA's 2006 Federal Conference. This is your main opportunity to hear from Washington insiders and Members of Congress about the issues of importance to the title industry. And a perfect opportunity to visit with your Member of Congress in person to carry the message about the value of title insurance.

Industry experts will bring you up-to-date and lead discussions on topics such as Where is HUD going with RESPA reform? How will privacy and data legislation affect the way you do business? Will the GSEs expand their reach into the title insurance realm? Who will advocate for our issues now that the House Financial Services Committee Chairman has announced he will not seek reelection in 2006?

Look for registration information for the Federal Conference soon—both in the mail and on ALTA's Web site.

Public Awareness Campaign Update

Media Activities

Two articles on title insurance were written for our Realtor® audience. The first article appeared in the Realtor Online magazine, the second appeared in the NAR Show Daily at the National Association of Realtors convention last Fall.

In response to HUD's RESPA roundtables, ALTA sent a press release promoting our position to more than 200 key media, and we spoke to and/or sent ALTA information to: *Harmon Homes*, *REALTOR® Magazine*, *the Motley Fool*, *Kiplinger's Personal Finance*, *Money Magazine*, *AARP Magazine*, *Inman News*, and *National Mortgage News*.

Ervin Bell also drafted a White Paper on the issue of Mortgage Impairment for use with the media, in response to a recent lawsuit on the issue.

In January 2006 our ads targeting legislators and regulators in the Washington, DC area ran in DC-area editions of *Time*, *Newsweek*, *Sports Illustrated*, and *U.S. News & World Report*. These ads were designed to show that the title industry protects homebuyers' largest single investment – their homes.

Consumers

To reach consumers directly, we placed banner ads on *homestore.com*, a very popular site for consumers searching for a new home as well as information about the homebuying process. We also ran an ad campaign on the Internet's most popular search engine, *Google.com*. The *Goggle.com* campaign allowed us to target consumers searching for information about the closing process by driving traffic to the consumer section of the ALTA Web site. In a three-month period in 2005 alone, the *Google.com* campaign drove nearly 18,000 homebuyers to the ALTA Web site.

Additionally, we ran the consumer "value" ad campaign for three months in Harmon Home's publications throughout the nation. Harmon Homes residential real estate magazines advertise homes for sale and are distributed for free from display racks in supermarkets and other locations.

GOVERNMENT & AGENCY news

Terrorism Risk Insurance On Track to be Extended

The Terrorism Risk Insurance Act (TRIA) is set to expire December 31, 2005, but recent congressional actions indicate that the program will be extended for two years with some modifications. The program was established to supplement the coverage provided by property and casualty insurers for losses suffered as a result of acts of terrorism. Many industries were concerned that without it the rising premiums for terrorism coverage would bring economic disruption, particularly in the insurance, real estate, and construction markets. The House and Senate bills differ, but each would increase the trigger levels that losses would have to reach before the federal program would begin. The White House prefers the Senate bill's language. At press time, an immediate conference between the House and Senate has been requested to resolve the differences, and both chambers are hopeful that they will pass a bill before TRIA expires.

Realtors Keep Banks Out Again

The National Association of Realtors (NAR) proved successful in barring banks from engaging in real estate brokerage, and management activities for the fourth time. NAR has successfully included language in the 2006 Transportation and Treasury Appropriation bill, similar to language included the last three years, that bars Treasury from finalizing a rule to allow these activities. NAR-supported legislation that would permanently prohibit banks from entering the market remains in both the House and Senate. This year Chairman Mike Oxley (R-OH) and Ranking Member Barney Frank (D-MA) introduced opposing legislation for the first time.

Chairman Mike Oxley Announces His Retirement

After 25 years in the U.S. House of Representatives, Chairman Mike Oxley (R-OH) of the House Financial Services Committee announced that he will not seek reelection in 2006. Chairman Oxley has headed the Committee since it was created from the House Banking Committee in 2000. The fact that Republican chairmen are term limited factored into Chairman Oxley's decision not to run in 2006.

During his tenure, Chairman Oxley passed landmark legislation. The Sarbanes-Oxley Act, which reformed corporate accounting, bears his name. He was also instrumental in the passage of the antiterrorist financing provisions in the Patriot Act and the Terrorism Risk Insurance Act (TRIA), identity theft protections in the Fair and Accurate Credit Transactions (FACT) Act, and Check 21.

ALTA congratulates Chairman Oxley on his achievements and distinguished congressional career.

Participate in National Homeownership Month

Did you know that June has been designated as National Homeownership Month for the last several years? The goal is to educate potential homebuyers on the home buying process. HUD and various local governments offer educational opportunities and look for industry participation. While the weather suggests that June is a long way away, it will be here before you know it. Plan on participating and represent the title industry. Information on how to get involved will be featured in future editions of Title News and E-News.

Please contact Charlene Nieman, grassroots & PAC manager at charlene_nieman@alta.org with questions or concerns regarding Government News.

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Claims: Servicers Sound Off!

Increasingly the title industry has received more criticism from the mortgage banking industry for our handling of claims. Here, as food for thought, are some of their complaints.

by Albert "Bert" Rush

Each year title industry executives are welcomed at conventions of mortgage bankers throughout the United States, but last year was different.

Although the welcome mat was still out, last year industry representatives who attended these meetings heard new and stinging criticisms by mortgage servicers of title insurance and, in particular, title claims handling.

This drumbeat of criticism began in the spring of 2004 at a meeting sponsored by the Mortgage Bankers Association in Orlando, and reached a culmination at the ALTA convention in New York last October. There I moderated a panel that included Diane Mitchell, vice president of default administration for Select Portfolio Servicing in Salt Lake City, UT; Chris Pitaniello, senior vice president of special servicing for Aurora Loan Services/Lehman Brothers in Englewood, CO; and Jonathan Richards, senior vice president and regional Counsel for Fidelity National Title Insurance Company of New York. NY.

As of this writing, issues being raised by servicers have engaged title management throughout the country and have spurred much discussion within the ALTA Forms Committee.

Here, in a nutshell, is what the servicers are saying.

"YOU ARE NOT MEETING OUR NEEDS."

Servicers are saying that title claims handling is much too slow. They say the "business model" that gives a title insurer the option to respond to a covered title defect by either paying the policy amount, seeking settlement, or defending the title through legal action too often results in unreasonable delay. They complain that insurers invoke this "option to cure" under the terms of the loan policy for protracted and indefinite periods, allowing servicers and others on the lender's side to suffer unrecoverable damages.

Likewise, servicers say that claims handlers (whether in-house or outside counsel) do not provide regular progress reports and that when the servicer has a complaint, too often they don't know who to talk to.

"YOU DON'T UNDERSTAND OUR BUSINESS."

Today mortgage servicing is big business, separate and distinct from loan origination, funding, securitization, and marketing to investors (the "secondary market"). Top servicers are handling more than one million loans at any given time.

The essential work of the servicer is to receive mortgage payments, disburse income to investors, manage delinquency and default scenarios, and meet strict loss mitigation goals. Servicing agreements commonly obligate the servicer to make monthly payments to investors even when borrowers are delinquent. The procedures to be followed in the event of borrower delinquency are typically guided by a "decision tree," which is part of the servicer's overall loss mitigation strategy. When foreclosure is indicated, the servicer assigns the case to outside counsel (or "foreclosure mill") for handling. Both the servicer and outside counsel are expected to accomplish foreclosure within strict timelines, periods of which are determined by local law and practice but are nevertheless strictly enforced. When timelines are not met, servicers and outside counsel give up income.

Servicers tell us that costs of delay range from $25 to $50 per day, which may be borne by the servicer and/or outside counsel.

Within the number of mortgage loans handled by a given servicing company, between 4 and 5 percent will be delinquent at any given time. Of these, servicers tell us that 8 to 10 percent of mortgages will be found to have title problems. Some, but not all, of these problems will be covered by title insurance.

The most common title problems encountered by servicers are prior liens and mortgages not released of record, erroneous legal descriptions, and "vesting issues" such as may arise from discrepancies between a vesting deed and subsequent mortgage, or from gaps in a chain of title.

In response to all this, some title people have commented that lenders have brought many of the problems upon themselves. For example, lender-driven automated loan underwriting and other cost-cutting measures have sped up loan closings and exerted downward pressure on closing and title fees. In their haste to deliver signed loan packages, escrow and closing agents have cut corners in reviewing documents prior to recording and, in some markets, have eliminated post-closing review and follow-up altogether.

Servicers say that claims handlers (whether in-house or outside counsel) do not provide regular progress reports and that when the servicer has a complaint, too often they don't know who to talk to.

To which servicers answer: "We are not originators, we are servicers working on behalf of your insured lender, and you should handle our claims without regard to issues you may have with originators."

Which leads us to another point....

"WALL STREET IS WATCHING."

Servicers say that the "business model" for title claims handling, by which they mean the so-called "option to cure" and the way it is invoked by title insurers, is outmoded. While it may have served lenders' needs 40 years ago, it fails to do so today.

Forty years ago mortgage loans were typically originated by financial institutions, which both serviced and held the loan as an asset for the life of the loan. The asset value of the loan to the lender was the principal amount plus some calculation of interest to be earned.

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Later, increasing numbers of mortgages were purchased from originators by government sponsored entities (GSEs), principally Fannie Mae and Freddie Mac, and "securitized" as the basis for offerings to investors. This securitization involved creation of mortgage pools and offering of interests in the income stream generated by the mortgages, to investors. Thus, a pool of mortgages earning interest at 6.25% might be packaged and offered as a security paying 6%, with the GSE indemnifying the investor against risk of borrower defaults. Although not part of the offering, investors considered the GSE indemnity as being backed by the U.S. government. Servicing of pooled mortgages was assigned to servicing companies, but servicers were not too involved with defaults since GSEs typically required originators to repurchase problem loans.

In recent years the GSE business model has been copied and adapted by investment bankers, who likewise assemble mortgage pools and offer interests in the resulting income streams to investors. Like the GSEs, these private issue (or "private label") offerings include indemnification against risk of borrower defaults, but, unlike the GSEs, they include nonconforming and non-prime loans, and they are not backed by the government. In the absence of GSE or government backing, Wall Street analysts and investors value these offerings in reliance on ratings bestowed by independent rating agencies such as Standard & Poors, Fitch Ratings, and Moody's. These ratings include evaluations not only of loan quality at origination but also default management and loss mitigation performance through servicing. It follows that servicer performance with respect to default timelines and loss mitigation directly affect

The most common title problems encountered by servicers are prior liens and mortgages not released of record, erroneous legal descriptions, and "vesting issues."

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earnings of the investment bank and the servicer behind the offering.

So today's servicers find their reputation and earnings affected, in part, by timely resolution of title problems and title claims handling.

A WARNING

Servicers warn that if title insurers do not address their concerns, these issues may grow in importance with rating agencies, Wall Street analysts, and investment bankers, and the value of title insurance may be seriously questioned.

WHERE DO WE GO FROM HERE?

Servicers seem to appreciate that it is not reasonable or feasible to expect title insurers to simply "buy" every mortgage found to have a "title problem." If we were to attempt to do so, we would be certain to endanger the solvency of the title industry, and, equally as certain, there would be more problem loans.

Instead, servicers have argued that title insurers should observe timelines in connection with claims handling and pay when time runs out (either by purchasing the mortgage or maximizing settlement offers to fix the problem). In response, title folk say it's unreasonable to set time limits on claims handling, because in many cases timing cannot be controlled, and hurried claims handling would result in waste and unpredictable growth of loss expenses. Servicers answer: "We are required to complete foreclosures within timelines in every state, and every county, and you should share this burden."

Servicers have also suggested that title insurers might be rated on claims experience and claims handling. These ratings might be done within the mortgage lending industry or by the same agencies that rate offerings of mortgage-backed securities.

Some have suggested that title insurers might centralize claims handling, so that servicers might have a single, reliable point of contact for all claims-related inquiries and issues.

Servicers warn that if title insurers do not address their concerns, these issues may grow in importance with rating agencies, Wall Street analysts, and investment bankers, and the value of title insurance may be seriously questioned.

Finally, the ALTA Forms Committee is considering two provisions to be included in the new loan policy form, which is expected to be approved by mid-2006, that would (a) increase the policy amount by 10% in cases where an insured mortgage is unsuccessfully defended through legal action and (b) allow the insured lender to measure damage from a covered title defect using either value of the insured land at the time the defect was discovered or at the time a policy benefit is to be paid, whichever the lender prefers. But some servicers say this does not do enough, because it would not adequately "share the pain" of protracted claims handling.

CONCLUSION

The risks covered by title insurance are many and varied, and standard policy forms provide great flexibility for claims handlers to find ways to meet the needs of the insured. Indeed, over the years the "option to cure" has been viewed by many insureds as a great benefit, allowing for costly legal defense of insured titles in the face of uncertain outcomes with assurance of indemnification if the defense is unsuccessful.

But now we are hearing from mortgage lenders that their industry has been reorganized, divided into discrete segments, and one segment, the servicers, believes that our products and services may not be meeting their needs. Put differently, the old option to cure may be gumming the works of mortgage finance.

The servicers have spoken. We are now called upon to respond in ways that will affirm our commitment to customer satisfaction, and reemphasize the value proposition of title insurance.

Bert Rush is senior vice president/national counsel for First American Title Insurance Company, Santa Ana, CA. He is also the chair of the ALTA Claims Administration Committee. This article is an excerpt from his presentation at ALTA's Annual Convention last October in New York. Bert can be reached at brush@firstam.com.

ALTA Introduces Updated Arbitration Rules and Procedures

Several key changes to the Title Insurance Arbitration Rules are all intended to improve fairness and efficiency while ensuring the enforceability of arbitration awards issued under the system.

by Christopher Gibson and Sheldon Hochberg

Effective on January 1, 2006, a new arbitration system will be introduced to support the dispute resolution needs of ALTA-member title insurers and their insureds.

Arbitration is not a new approach for the disputes that can arise under title insurance policies. In fact, since 1987 all ALTA title insurance policy forms have contained an arbitration provision. However, as an important part of the current efforts of ALTA's Title Insurance Forms Committee to revise the standard Loan and Owner's Policies, a careful review and update of this arbitration regime has taken place.

Prior to these recent changes, the standard arbitration provision in an ALTA policy referred to the Title Insurance Arbitration Rules (TIAR) of the American Arbitration Association (AAA), which served as the administrator for arbitrations under the TIAR. The TIAR provides important supplemental rules, tailored for the title insurance industry, that were designed to work in conjunction with the AAA's own commercial arbitration rules. In recent years, however, this approach has not been satisfactory: the AAA withdrew administrative support for arbitrations under the TIAR, instead offering to act as administrator only when its own rules were used without variation.

As a consequence, the ALTA Forms Committee has undertaken a comprehensive review of the TIAR and the administration of arbitrations under those rules, including the overarching need to provide efficient and fair resolution alternatives for title insurers and their insureds for disputes arising under title insurance policies; ensuring the independence and neutrality of the arbitrators and the institution administering arbitrations; holding down the costs; and, importantly, reinforcing the enforceability of arbitration decisions handed down under the title insurance arbitration system. As a result of this review process, the revised approach now includes several key changes:

- the appointment of a new administrator for title insurance arbitrations, the National Arbitration Forum (NAF),
- the adoption of new and revised TIAR, and
- an improved cost structure for title insurance arbitrations.

In addition, the ALTA Forms Committee is proposing slightly modified language for the arbitration provision in the revised ALTA policy forms which will be adopted in 2006.

Both ALTA and NAF are committed to providing improved access to notice and information about the new arbitration procedures. Complete details about the new arbitration system for title insurance disputes (including downloadable copies of the revised TIAR and NAF's arbitration rules–the NAF Code of Procedure) are now available on ALTA's Web site at: www.alta.org/standards/arbitration.cfm or on NAF's Web site at www.arb-forum.com. Additional information about the new ALTA dispute resolution system will also be made available in brochures and enhanced notices, as well as at relevant industry conferences and meetings.

Christopher Gibson and Sheldon Hochberg are attorneys with Steptoe & Johnson, LLP, Washington, DC. Christopher represents clients in commercial conflicts, focusing on domestic and international arbitration and litigation, particularly where intellectual property and technology issues are involved. He is a well-known speaker and writer on arbitration issues. Sheldon has been outside counsel to ALTA on RESPA and other matters for over 30 years. Both assisted ALTA in developing the revised TIAR and arbitration regime discussed in this article.

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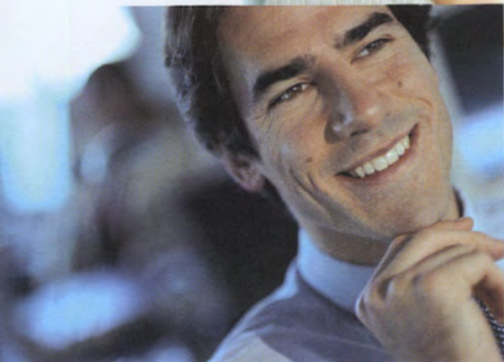

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NAF AS ADMINISTRATOR FOR ARBITRATIONS

Following a review of several independent dispute resolution services, ALTA chose to appoint the National Arbitration Forum (NAF) as the administrator for arbitrations under the TIAR, not only in view of its reputation and experience but also because of its willingness to commit resources to develop and promote the title insurance arbitration system. NAF was founded in 1986 and has become one of the world's major providers of alternative dispute resolution services, focusing primarily on arbitration and mediation. NAF administers over 50,000 cases annually, with offices in Minneapolis (its headquarters), Los Angeles, and New Jersey. NAF maintains a panel of over 1,500 neutral arbitrators and mediators, including retired judges and attorneys who have had more than 15 years of experience. NAF has committed to work with ALTA to further develop its existing panel to include a geographically diverse roster of arbitrators with relevant experience in real estate and/or title insurance to be available to serve in the disputes arising under the ALTA arbitration system.

NAF has experience working with other associations to develop specialized procedures adapted to the particular circumstances. The majority of its cases fall into categories such as commercial financing, construction, employment, healthcare, insurance, and real estate disputes. NAF also maintains a centralized technology-based case management system. The case management system allows the parties to file and respond to claims electronically via the NAF Web site. The system also tracks each procedural step taken during a case while providing access to case documents.

CHANGES UNDER THE TIAR AND NAF CODE OF PROCEDURE

The shift from the AAA's rules to the revised TIAR and NAF Code of Procedure will not create a dramatically different procedural framework for title insurance arbitrations, nor will it introduce unfamiliar steps, additional delay, or

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increased costs. Indeed, it is expected that the effect will be quite the opposite. The procedures are quite similar, with the arbitration in a typical case anticipated to be concluded in less than six months.

ALTA's revised TIAR is designed so that it continues to work in conjunction with the rules of the administrator—now the NAF. The TIAR acts as controlling supplemental rules to NAF's Code of Procedure; to the extent there is any difference between them, the TIAR takes precedence. The Code of Procedure, in turn, sets forth the more detailed process and procedure, the timeline and the fees for an arbitration, and requires the final decisional award to conform to applicable law.

Details of the Procedure: Under the revised arbitration clause in the new Loan and Owner's Policies under consideration, the scope of the matters that can be arbitrated is specified as any claim by either the title insurance company or the insured relating to the title insurance policy or to any service in connection with the policy's issuance. The arbitration clause has been revised so that the threshold below which mandatory arbitration can be initiated at the call of either party has been increased from $1 million to $2 million. Thus, when the amount of the claim is $2 million or less, arbitration is the mandatory dispute resolution remedy at the option of either the title insurer or the insured. However, when the amount of the claim is in excess of $2 million, these larger disputes will be arbitrated only when there is mutual agreement to do so (at the time of the dispute) by the title insurer and the insured.

The process for appointment of arbitrators under the new system is set forth in Rules 21 and 22 of the NAF Code. There will normally be one arbitrator, unless the parties agree on a different number, such as a panel of three arbitrators. The parties have the opportunity in the first instance to cooperate and select the arbitrator "on mutually agreeable terms." Should they fail to do so, however, NAF will propose a list of candidates from which a party can strike off one name, leaving NAF to designate the arbitrator from among the names remaining. The parties always reserve the right to request disqualification of an arbitrator for reasons of conflict of interest, prejudice, or bias. The Code thus gives the parties real input into the selection of the arbitrator.

The NAF Code ensures that all legal remedies are available to the parties, making any relief available in a judicial forum also available in a NAF arbitration. (Rules 5K and 20). The law to be applied to a dispute is established in the TIAR as "[t]he law and rules of equity of the situs of the land." The location of the arbitration will be left to the mutual agreement of the parties, but should they fail to agree, the NAF will have the power to determine the location in the state in which the land is located. Although expected to occur only very infrequently, the TIAR provides when two or more arbitrations may be consolidated, such as when a reasonable number of the following circumstances are present: each of the parties to the separate arbitrations has consented or agreed to arbitrate under the TIAR; the insurance policies on which the respective arbitrations are based are linked; there are common issues of fact among the arbitrations that will require the same or substantially same proof; or the parties or subject matters of the arbitrations are related in some other way such that consolidation will promote a fair, economical, or efficient disposal of all issues presented in all of the arbitrations.

The NAF Code in Rule 5 provides a useful step-by-step summary of the arbitration proceedings. An arbitration can be commenced by a party filing a claim with NAF, accompanied by the appropriate fee. The required contents of the initial claim are specified in Rule 12. NAF opens the case and assigns a case number, then notifies the claimant so that it can serve its claim on the respondent. The respondent is given 30 days to file its response, with Rule 13 of the Code indicating what should normally be filed in the response.

Following this initial exchange between the parties, the arbitration will normally proceed in accordance with a Scheduling Notice issued by NAF. Rule 9 provides that the time periods established in the Code are to be "strictly enforced." There are no arbitrary limits placed on the evidence that can be supplied in support of the parties' claims. Discovery is provided for under Rule 29, which first calls for the parties to cooperate in the exchange of documents and information, but also provides a procedure for the parties to request an order from the arbitrator concerning any unresolved discovery matters, including disputes over disclosure of documents or depositions. In ruling on discovery requests, Rule 29 provides that the arbitrator will consider whether the information requested is relevant, reliable, and informative, as well as whether the cost of production is commensurate with the amount of the claim and not unduly burdensome.

The NAF Code takes an innovative approach toward the arbitration hearings. Under Rules 25 and 26 respectively, either party may choose between a "document

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hearing" or "participatory hearing." The document hearing choice calls for the case to be decided on the basis of documents and written evidence alone. For cases involving less than $75,000, these are defined under the Code as "common claims" and a documentary hearing would normally be scheduled upon the respondent's filing of the response. When a participatory hearing is selected by either party however, the case is decided not only on the basis of documents and evidence; a hearing between the parties will also be held, and it can be in-person, by telephone, or online. As discussed below, under the NAF Code the fees to be charged are higher when the participatory hearing is selected.

The arbitration award should normally be issued within 20 days after the date of close of the hearing. The award will be based on the preponderance of the evidence standard, unless the agreement of the parties or applicable law requires otherwise. The TIAR provides that the arbitrator "may grant any remedy or relief that the arbitrator determines to be just and equitable according to applicable laws and the terms of the policy," but the award may not exceed the amount of the claim. The award may include fees and costs awarded by the arbitrator in favor of either party, only as permitted by law. Rule 37 of the NAF Code provides that the parties can request whether they want a "summary" award or an award that would include reasons, findings of fact, and conclusions of law. A lower fee is charged for a summary award. Under Rule 4, the arbitration award is not confidential and may be disclosed by the parties. The award may be enforced in any court of competent jurisdiction. Rule 5M provides, however, that an award or order may also be reviewed by a court to determine whether the arbitrator properly applied the applicable law and whether the arbitration complied with applicable laws.

Through these basic steps, the new arbitration system is designed to facilitate fairness among the parties, as well as efficiency, timeliness, and lower costs.

Transition from the old TIAR and AAA Rules: While the new ALTA arbitration scheme officially began January 1, 2006, there are many outstanding title insurance policies with references to the AAA and the old TIAR (which also reflected the AAA as administrator of the TIAR). With the assistance of counsel, the Forms Committee concluded that given the ministerial nature of the administrator's role in the arbitration process and the fact that AAA has withdrawn its services under the TIAR, a neutral and competent third-party administrator such as NAF can be substituted for the AAA (notwithstanding the policy's specific reference to the AAA as administrator), without impact on the enforceability of the arbitration provision itself. In any event, at the commencement of any arbitration before the NAF in which reference is made to the old TIAR and AAA, the arbitrator should confirm the agreement of the parties to his jurisdiction to decide the dispute.

A NEW COST STRUCTURE FOR ALTA ARBITRATIONS

The fees payable under an NAF-administered arbitration are likely to be somewhat lower than those incurred in arbitrations administered by the AAA. This is good news, particularly in view of the scrutiny that some courts apply when one of the parties to the arbitration agreement is a consumer. In such cases, if that party challenges the arbitration agreement or process, a court may scrutinize the fees to be paid by the consumer as one element to be considered in determining whether the overall arbitration process is fair.

The revised TIAR has adopted the NAF cost-allocation scheme, which takes the approach that the business involved—whether acting as claimant or respondent—will bear most of the costs when a consumer is the other party, particularly where the amount in dispute is under $75,000. In particular, the NAF Code and Fee Schedule allocates the main fee components as follows:

- If a consumer is the claimant, the consumer will pay the filing fee, but the insurer as respondent will pay the commencement and administrative fees (see below for a description of the fee components). If the consumer selects a participatory hearing, the consumer will also pay half of this fee; on the other hand, if the insurer chooses a participatory hearing, it will pay the full cost of the hearing.
- If the insurer is the claimant, it will pay the filing, commencement, and administrative fees. The consumer will pay only if it chooses a participatory hearing, in which case it will pay half of the fee for the hearing.

This approach concerning fees payable by consumers, which allocates most of the costs of the arbitration to the business party, is taken in light of legislation and developing case law and the need to avoid fee structures that might be considered unconscionable in the consumer context. Several courts have commented favorably on the NAF approach for allocating fees among the parties. For example, Justice Ruth Bader Ginsburg of the U.S. Supreme Court wrote in an opinion that "other national arbitration organizations (Example: The National Arbitration Forum) have developed similar models for fair cost and fee allocation." Green Tree Financial v. Randolph, 531 U.S. 79 (2000). The United States District Court for the Southern District of New

York has commented on this reference while making its own assessment:

"This fee schedule in the NAF Code has been upheld as adequate and fair by numerous courts (citations omitted). In Green Tree, Justice Ginsburg, in a separate opinion, concurring in part and dissenting in part, characterized the NAF Code provisions limiting fees in consumer small claims cases, a 'model [] for fair cost and fee allocation.' This court agrees..... Thus, plaintiffs are in no worse position under the NAF Code then they would be in federal court." In re Currency Conversion Fee Antitrust Litigation, 265 F.Supp.2d 385 (S.D.N.Y. 2003).

The NAF schedule of fees includes the following general fee components, each of which is preset and becomes payable at the appropriate time during the arbitration procedure:

Filing fee + commencement fee + administrative fee + participatory hearing fee (see table below).

All of these itemized fees are intended to include the entire cost of administration as well as the cost of payment to the arbitrator who handles these matters. In other words, there is no separate payment to the arbitrator according to hourly rate – all fees to be paid are incorporated in the NAF schedule of fees. In addition to the main fees listed above, there can be other itemized fees that may be charged for "requests" that might be made during the course of the arbitration procedure (e.g., request an order from the arbitrator on a particular matter during the proceedings under Rule 18 of the Code). These itemized fees will add to the cost of the arbitration procedure if many such requests are made during the arbitration.

ENFORCEABLE ARBITRAL DECISIONS

The review and updating of the TIAR regime was conducted with an eye toward ensuring the enforceability of awards issued in arbitrations under the title insurance policies of ALTA members. When confronted with an arbitration provision in a contract, a court must determine whether the agreement to arbitrate should be

Amount of Claim	Document Hearing or Participatory Hearing	NAF Fees
$50,000.	Document Hearing only	$1,170.
	Participatory Hearing (assume 3-hour session)	$1,920.
$250,000.	Document Hearing only	$2,300.
	Participatory Hearing (assume one 6-hour day)	$6,300.
$500,000.	Document Hearing only	$3,000.
	Participatory Hearing (assume one 6-hour day)	$8,000.
$1,000,000.	Document Hearing only	$4,500.
	Participatory Hearing (assume one 6-hour day)	$10,500.
$2,000,000.	Document Hearing only	$6,500.
	Participatory Hearing (assume one 6-hour day)	$13,500.

enforced and the case referred to arbitration or whether the provision should not be enforced and the court should adjudicate the matter. As contract interpretation is an issue specifically reserved for arbitration, courts frequently avoid interpreting specific contract language, but rather evaluate the enforceability of the provision as a whole.

As a threshold issue to enforceability, courts will usually evaluate whether the arbitration provision is substantively or procedurally unconscionable. "Substantive unconscionability" involves situations where one or more aspects of the arbitration provision are one-sided or overly harsh. "Procedural unconscionabilty" involves an inquiry into the manner in which the contract was entered, whether each party had an opportunity to understand its terms, and whether the terms were hidden in a maze of fine print. Some states (e.g., California) will only invalidate an arbitration provision if there is both substantive and procedural unconscionability. See Acorn v. Household Int'l Inc., 211 F.Supp.2d 1160 (N.D.Cal. 2002). Other states (e.g., Washington) may invalidate an arbitration if there is either substantive or procedural unconscionability. See Tjart v. Smith Barney, Inc., 28 P.3d 823 (2001).

Accordingly, key among the elements that must exist to avoid substantive unconscionability is that the agreement to arbitrate and underlying procedural steps must be mutual as between the parties – both parties must be subject to the same provisions and restrictions. Courts have found arbitration agreements to be unconscionable where a key arbitration term is one-sided, either expressly so or in its practical effect, such that only one party is entitled to rely on that provision. All of the terms in the TIAR and the NAF Code are designed to confer mutual procedural rights as well as arbitral obligations on both parties.

Another important consideration, as explained above, is that the costs of the arbitration must be reasonable, particularly those costs that must be paid by the consumer. A further element to be considered is that the arbitration process should be administered by a neutral and impartial service provider. The choice of NAF as the independent provider under the TIAR ensures such neutrality. The finding of one court reflects a view that has been signaled by a number of courts in cases where NAF arbitration awards have been challenged: there is "no persuasive evidence that the National Arbitration Forum is anything but neutral and efficient." Lloyds v. MBNA Bank, N.A., 2001 WL 194300 (D. Del. Feb. 22, 2001). Several other aspects of the NAF's Code of Procedure have been tested in litigation and received positive review. For example, the fact that remedies are not restricted under the NAF Code has received favorable comment from the courts in reviewing the enforceability of decisions rendered in cases administered by NAF. See Johnson v. West Suburban Bank, 225 F.3d 355 (3rd Cir. 2000); Baron v. Best Buy, 260 F.3d 625 (11th Cir. 2001); Marsh v. First USA Bank, 103 F. Supp.2d 925 (N.D. Tex. 2000).

Attention was also given during the Forms Committee review process to the issue of punitive damages. Courts are divided as to whether a limitation or prohibition on punitive damages as a remedy in arbitration would be enforceable. The U.S. Supreme Court has found that parties' agreement to preclude punitive damages in arbitration is generally enforceable. See Mastrobuono v. Lehman Hutton, Inc., 514 U.S. 52 (1995). Additionally, although this list is not exhaustive, the District of Columbia, Fifth and Seventh Circuits, the federal district court for the Central District of California, and the Mississippi Supreme Court have upheld agreements prohibiting or limiting an award of punitive damages. By contrast, state courts in Alabama, California, Pennsylvania, and West Virginia have found such limitations unconscionable. Accordingly, to ensure enforceability, there are no limits on punitive damages under the TIAR and NAF Code: The arbitrator in deciding a case may grant any remedy or relief that the arbitrator determines to be just and equitable according the applicable laws and the policy, so long as the award does not exceed the amount of any claim or counterclaim. See TIAR, paragraph 8; NAF Code, Rules 5K and 20. In light of the nature of claims generally brought under title insurance policies, punitive damages should not be a significant issue.

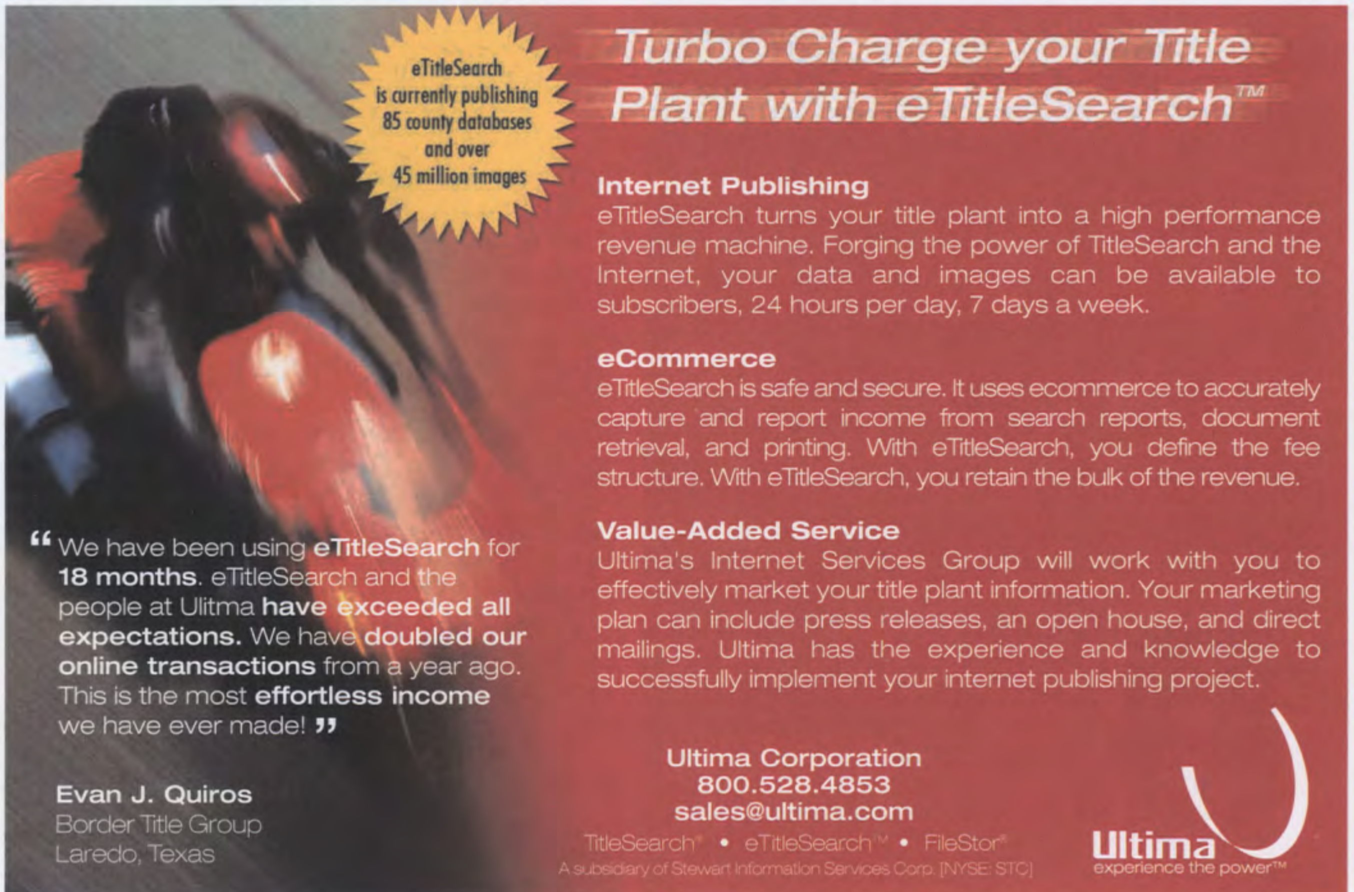
Finally, at least one court has found that a confidentiality requirement in an arbitration agreement was substantively unconscionable because it believed that the business involved would reap the advantage of having repeated access to related disputes with consumers, but the consumers would not. The term therefore was viewed as one-sided in its effect. The ALTA review process considered this point and decided to rely on the approach set forth in NAF Code Rule 4, which provides that: "Arbitration Orders and Awards are not confidential and may be disclosed by the parties."

With respect to procedural unconscionability, a significant concern is the manner in which the arbitration provision was agreed to or included in the contract. This is particularly relevant for contracts in which one party is deemed to be a consumer. To enforce an arbitration provision, courts often look at whether the consumer had adequate notice of the provision or at least an opportunity to review the

contract language. A consumer may not receive adequate notice if the relevant language was included in small print or was presented in an unclear or confusing manner. For example, in both Sutton's Steel & Supply, Inc. v. BellSouth Mobility, Inc., 776 So.2d 589 (La. Ct. App. 2000) and East Ford, Inc. v. Taylor, 826 So.2d 709 (Miss. 2002), the courts found the arbitration provisions to be unenforceable because the consumer was not made aware of the arbitration provision and the provision appeared on a preprinted form in "exceedingly small print." Nevertheless, a number of courts have enforced contracts with arbitration provisions even when the consumer did not review the document prior to agreeing to it. For example, in Swain v. Auto Servs, Inc., 128 S.W.3d 103 (Mo. Ct. App. 2004), the court enforced an arbitration provision in a consumer contract between an automobile purchaser and the automobile maintenance provider finding that "an average person would reasonably expect that disputes arising out of an agreement like this might have to be resolved in arbitration." These courts justify their decisions by stating that any party entering into such an agreement was likely to know that it could be required to arbitrate disputes.

As discussed above, in view of these concerns regarding notice, both ALTA and NAF are committed to providing improved access to notices and information about the TIAR arbitration regime, including in brochures and enhanced notices, through online information available on ALTA's and NAF's Web site (including downloadable copies of the TIAR and NAF's Code of Procedure), as well as at relevant industry conferences and meetings.

The revisions to the ALTA arbitration system, which became effective on January 1, 2006, have been introduced to support the dispute resolution needs of ALTA members and their insureds. Several key changes, including the appointment of NAF as administrator, the adoption of the revised TIAR, and an improved cost structure for the fees associated with ALTA arbitrations, are all intended to improve fairness and efficiency while ensuring the enforceability of arbitration awards issued under the system.



Recent Developments in 1031 Exchanges

Recent changes in the law regarding 1031 exchanges have been useful for taxpayers exchanging mixed-use properties but have made it more difficult to do some improvement and related-party exchanges.

by Mary Kay Kennedy

Investors have been taking advantage of the tax deferral benefits of Section 1031 of the Internal Revenue Code for about 80 years. During the last 20 years, changes in the law have given investors a lot more flexibility in structuring their exchanges. Recently, Congress and the IRS have responded to some creative methods used by investors and their advisers to defer tax. In some cases the new laws limit the taxpayer's options, and in other cases the rulings are highly taxpayer friendly. This article summarizes a few of the more important Section 1031 developments of the last few years.

MIXED-USE TRANSACTIONS: THE SUPER TAX BREAK

The IRS recently issued a ruling that clarifies the tax effect of exchanging properties that are used both as the owner's principal residence and as investment property. These mixed-use properties include a home with a home office, a farm with a farmhouse, or a duplex where one unit is rented and the other unit functions as the owner's principal residence. Mixed-use property can also refer to a property that is used first for one use and then for another use. For example, a home can function as a rental and then as a principal residence or vice versa.

The IRS recently issued a ruling that clarifies the tax effect of exchanging properties that are used both as the owner's principal residence and as investment property.

The two tax codes that affect a mixed-use property are Internal Revenue Code Section 121 and Internal Revenue Code Section 1031. Under Internal Revenue Code Section 121, a homeowner can sell his principal residence and exclude up to $250,000 of gain ($500,000 for married taxpayers filing jointly), provided the owner has owned and lived in the home as his principal residence at least two of the five years immediately preceding the sale. Taxpayers can take advantage of this exclusion of gain once every two years.

Section 1031 of the Internal Revenue Code permits investors to exchange property and defer the tax that otherwise would have been due on the sale, provided that both the property disposed of (the "relinquished property") and the property acquired (the "replacement property") are used in connection with the investor's trade or business or held for investment purposes. To have a valid exchange, investors must have held the relinquished property for investment purposes and must intend to hold the replacement property for investment purposes. It is unclear exactly how long the holding period must be, but many tax advisers recommend holding the property for investment at least one or two years.

In 2005, the IRS published a ruling (Revenue Procedure 2005-14) that confirms it is possible to exclude tax on the sale of a principal residence under Section 121 of the Internal Revenue Code, and defer tax under IRC Section 1031, for the same property and at the same time. Prior to this ruling many tax advisers believed that Sections 121 and 1031 could be applied to the same property at the same time, but there was no clear guidance that this was

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acceptable, or if it was, how the tax exclusion and deferral would work together.

The new ruling does several things. First, as explained above, it confirms that the Section 121 exclusion and Section 1031 deferral of tax can be used for the same property at the same time. This is possible for properties that are being used for two purposes concurrently, and also for some properties where the use is changed from personal to investment, as explained in more detail below.

Second, the ruling provides guidance to tax advisers about computing the basis and gain of properties that are exchanged as mixed-use properties. It is now clear that the exclusion under Section 121 is to be applied before the deferral of tax under Section 1031. This means that in some cases the taxpayer can walk away with cash without paying tax on it, as long as the cash does not exceed the gain that was excluded under Section 121.

Section 121 does not permit taxpayers to exclude any gain that is attributable to depreciation deductions taken after May 6, 1997. The new ruling clarifies that this gain can be deferred under Section 1031 if the investor does an exchange.

This ruling is helpful to any taxpayer planning to exchange mixed-use properties, but it is particularly beneficial to homeowners who plan to sell their principal residence but are looking at huge gains. In many areas of the country, people have enjoyed extraordinary gains on the sale of their principal residences. While the $250,000/$500,000 exclusion is generous enough for many areas of the country, it does not exclude most of the gain when a home is sold in other areas, such as New York and California. The new ruling allows taxpayers to convert their existing home to a rental, and after renting it for a while, combine the sale of a principal residence with a 1031 exchange. The tax that is not excluded under Section 121 can be deferred under Section 1031. This works because, although Section 1031 requires that the property be held for investment at the time of the exchange, Section 121 only requires that the property be used as the taxpayer's principal residence for a total of two years during the preceding five year period before the sale.

For example, Mike and Mary

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Johnson have owned and lived in their home for 20 years. They acquired it in 1985 for $200,000 and are ready to downsize to a condominium. If they sell it now, it will sell for $1,100,000. This means they will have $900,000 of gain. Under Section 121 of the Internal Revenue Code, the Johnsons will be able to sell their home, exclude $500,000 of the gain, and will owe tax on the remaining $400,000.

Instead, Mike and Mary decide to convert their home to a rental. They use some equity in their home to acquire a condominium, move into it, and rent their single family home for two years. When they sell it, they are able to take advantage of the $500,000 exclusion because they lived in the home as their principal residence at least two of the past five years. If they also exchange it for replacement property in a 1031 exchange, they can defer the remaining $400,000 of gain. This is possible because the home has been converted to a rental, even though it had earlier functioned as the owners' principal residence.

Unlike a typical exchange, in order to completely defer all tax, the Johnsons do not need to acquire a replacement property of equal or greater value. They can deduct the gain excluded under Section 121 ($500,000) before computing those numbers. For example, the Johnsons would need to acquire replacement property that was worth at least $600,000 in order to completely defer all of the gain.

The tax and financial effects of exchanging mixed-use properties under the new ruling vary depending on the level of equity in the property and whether the personal-use and investment-use properties are in the same "dwelling unit." Because of this, investors should discuss their transactions with a personal tax adviser before doing a mixed-use property exchange.

It is important to make one final point on this topic. Although an investor can convert his personal residence to a rental and combine the benefits of Sections 121 and 1031, the opposite does not work. Once a rental is converted to a principal residence, a 1031 exchange is not possible. This is because Section 1031 requires that the relinquished and replacement properties be held for investment at the time of the exchange. If the property is being used for a principal residence only, it cannot be exchanged. This situation is discussed in more detail in the next section.

CONVERTING FROM A RENTAL TO A RESIDENCE

Some investors acquire a property, rent it for a time, and then move into it and use it either as a principal residence or vacation home. Under Section 1031, it is important that investors establish that they intended to use the replacement property for investment purposes. There is no clear guidance about how long owners need to rent property to clearly establish that investment purpose, but many tax advisers recommend renting it for one or two years. Once an investor moves into the property, it is no longer investment property and cannot be exchanged; however, provided the owner uses it as his principal residence for at least two years, he can then sell it and exclude up to $250,000 of the gain ($500,000 for married couples) under Internal Revenue Code Section 121.

Late in 2004, Congress amended Section 121 of the Internal Revenue Code to add a five-year holding period for properties that are initially acquired as replacement property in an exchange and then are converted to a principal residence. In other words, if an investor acquires property in an exchange, rents it for a time, and then moves into it, he has an additional hurdle to overcome before he is able to exclude any gain upon the sale of the property. In addition to the requirement that he has lived there at least two of the past five years, he cannot exclude gain under Section 121 unless he has owned the property for a total of at least five years.

For example, Tom Smith acquires property in a 1031 exchange, rents it for two years, and then decides to move into it and use it as his principal residence. After living in it for two years, he decides to sell it and wants to obtain the benefits of Section 121 and exclude up to $250,000 of the gain from taxation. Unfortunately, he needs to wait an additional year because he needs to own the property at least five years before he can apply the Section 121 exclusion to property that was originally acquired in an exchange.

Although an investor can convert his personal residence to a rental and combine the benefits of Sections 121 and 1031, the opposite does not work.

TICs AND DSTs—BUYING A PIECE OF THE PIE

With the rise in the popularity of exchanges and the difficulty of acquiring replacement property, a new industry has grown up the last several years in which a syndicator, or "sponsor," acquires investment property and sells portions of it to interested investors, most of whom are trading into it in a Section 1031 exchange. Because a group of investors acquires

the property, the individual investor is able to own real estate that is significantly more expensive and of a higher quality than what the investor could purchase on his own. Since each investor obtains a tenant-in-common interest in the replacement property, the industry is referred to as the TIC industry.

In order for the transaction to qualify as a 1031 exchange, if the investor sells real estate, the replacement property must be real estate. Even if the investor acquires a tenant-in-common interest in real estate, if the transaction is not structured properly, the TIC investors could be considered to be a partnership rather than a group of individuals buying real property. If this is so, the property acquired would be considered to be a partnership interest rather than a real property interest, and therefore the exchange could be disqualified. Partnership interests are specifically excluded from being like-kind property under Section 1031.

Three years ago, the IRS published Revenue Procedure 2002-22, which establishes conditions that must be met before a sponsor or investor can obtain a private letter ruling from the IRS that a particular TIC arrangement is not a partnership for tax purposes. Since then, sponsors have been structuring their deals to comply with this ruling, even though it was not meant to be a safe harbor but just a first step in applying for a private ruling. For example, the ruling requires that each owner share in the revenue of the property in accordance with his tenant-in-common interest in the property. Any debt secured by a blanket lien against the property must also be shared by the owners that way. Certain decisions, such as selling, leasing, or refinancing the property or hiring a property manager, must be approved by a unanimous vote of the TIC owners.

The 2002 ruling has encouraged the growth of the TIC market, but the manner in which TIC deals must be structured for tax purposes makes it much more difficult to finance them than when there is just one purchaser. Since lenders prefer to underwrite and negotiate with one borrower rather than the multiple borrowers typical in TIC transactions, some lenders may avoid financing these projects.

Unfortunately, both the IRS and the courts have held that taxpayers cannot exchange into improvements on land that the taxpayer already owns.

In late 2004, the IRS issued Revenue Ruling 2004-86, which established the Delaware Statutory Trust as an alternative vehicle for investing in TIC properties. In these deals, a Delaware Statutory Trust (DST) acquires the property and is the sole borrower. The individual investors each acquire an interest in the trust, but if the DST is structured properly, each individual investor is deemed to have acquired a share of the real estate rather than the trust.

The benefit of this ruling is that a lender can deal with just one borrower, the trust. The drawback of the ruling, however, is that the DST must be structured so that the trustee has very limited powers. The trustee of the trust cannot sell the property, buy new property, enter into or renegotiate leases, refinance debt, or modify or improve the property. If the trustee has any of these powers, the trust will be considered the owner of the real estate, the individual investors will be considered to have acquired an interest in a trust, and the investors' exchanges would likely be disqualified.

There are some limited cases where DSTs may be useful. For example, with a single-tenant, triple net-leased property where the debt is in place, the trustee should not have a need to exercise the powers that are forbidden under the ruling. In these cases, using a Delaware Statutory Trust may open up more opportunities for financing the transaction.

TRADING INTO LAND YOU ALREADY OWN

Sometimes creative investors doing an exchange decide that they would like to acquire replacement property that consists of improvements on land they already own. For example, an investor may own a printing business and the building in which the business is located. He also owns vacant land in a better location. He would like to dispose of the existing property in an exchange and use the funds to build a new building on the land. Once the building is completed, the idea is to acquire it as replacement property in his exchange, even though he already owns the land on which the building is located.

Unfortunately, both the IRS and the courts have held that taxpayers cannot exchange into improvements on land that the taxpayer already owns. Tax advisers have proposed many creative solutions to this problem. For example, sometimes an investor will transfer the vacant land to a contractor, with the understanding that the contractor will build improvements on it and sell it to the original owner in connection with the owner's 1031 exchange. The original owner typically pays for the improvements and pays the expenses of owning and maintaining the property

while the contractor is on title. Because tax law requires an owner to have the benefits and burdens of ownership, these arrangements have not worked well, as the original owner is treated as never having transferred the property for tax purposes. Nevertheless, if the exchange can be structured as a safe-harbor improvement exchange under Revenue Procedure 2000-37, the entity temporarily holding title (called an "accommodator") does not have to have the benefits and burdens of ownership. If the safe harbor is used, the accommodator can take title to the property without receiving income or investing in the property, and will still be considered the owner for tax purposes.

The IRS recently addressed this issue in Revenue Procedure 2004-51, which effectively eliminates the ability to use the safe harbor for this type of transaction. This ruling states that a taxpayer who has owned the replacement property within 180 days before the date the property is transferred to the accommodator cannot do a safe-harbor improvement exchange under Revenue Procedure 2000-37.

Creative taxpayers have used other methods to build on land they already own and acquire it as replacement property. These include leasing the land to the accommodator or transferring the land to a related party and having that party lease the land to the accommodator. In the new ruling, the IRS says that it is continuing to study these structures and expects to give us further guidance in the future.

EXCHANGING WITH RELATED PARTIES

In 1989, Congress amended Section 1031 to add a two-year holding period for related-party exchanges. A related-party exchange occurs when the taxpayer either transfers its relinquished property to, or acquires the replacement property from, certain relatives or affiliated companies. Related parties include the taxpayer's ancestors (parents, grandparents), descendants (children, grandchildren), siblings or spouse, or companies that are owned by or are under common ownership with the taxpayer, provided the direct or indirect ownership exceeds 50%.

There have been several recent rulings that have disqualified exchanges in which the taxpayer is acquiring the replacement property from a related party.

In a simple two-party exchange where an intermediary is not required, both parties must hold the property acquired in the exchange for two years. If either party transfers the property before the end of the two-year period, both exchanges are disqualified.

In a more typical exchange where an intermediary is used, there is a different result, depending on whether the taxpayer is disposing of the relinquished property to a related party or acquiring the replacement property from a related party. If the taxpayer is transferring the relinquished property to a related party, both the taxpayer and the related party must hold the property each party acquires for a minimum of two years. In other words, the related party must not transfer the relinquished property and the taxpayer must not transfer the replacement property prior to the end of the two-year period. If either party transfers the property early, the taxpayer's exchange is disqualified.

If the taxpayer acquires replacement property from a related party in an exchange, it is likely that the exchange will be disqualified unless the related party is also doing an exchange. There have been several recent rulings that have disqualified exchanges in which the taxpayer is acquiring the replacement property from a related party. Revenue Ruling 2002-83 held that a taxpayer who acquires replacement property from a related party, even if the acquisition is through an intermediary, cannot benefit from the tax deferral of Section 1031 if the related party receives cash or other non like-kind property. In other words, if the intermediary uses the cash from the sale of the relinquished property to purchase the replacement property from the related party and the related party is not doing an exchange, the related party has "cashed out," and the taxpayer's exchange is disqualified.

Last year the IRS issued a private letter ruling approving an exchange in which the taxpayer acquired from a related party. In this case the related party was also doing an exchange, and therefore did not "cash out." In addition, both parties stipulated that they would hold the replacement properties for the two-year period.

CONCLUSION

Recent changes in the law regarding 1031 exchanges have been useful for taxpayers exchanging mixed-use properties but have made it more difficult to do some improvement and related-party exchanges. As with any exchange, it is important to discuss the specifics with a tax attorney or accountant.

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Significant Milestones, Tough Challenges

ALTA's Public Awareness Campaign Enters Fourth Year

by Michelle Sweet

ALTA launched a fairly aggressive Public Awareness Campaign in the spring of 2003 to educate key publics about title insurance and the value it provides. These key publics include real estate professionals, lenders, consumers, regulators, legislators, and the media.

At the ALTA Annual Convention last October in New York, the ALTA Board of Governors voted to extend the campaign another year. To fund the campaign for 2006, the five national underwriters have agreed to match the funds contributed by the ALTA agent community to the campaign. This is a great way for agent members to have their contributions go further. The ALTA 2006 dues invoices will have a place for your contribution.

It is vitally important to keep our positive momentum going. The ongoing education this campaign provides is of great benefit to our industry and our individual members. Following is a summary of what we've accomplished during the past three years, and the programs we are looking forward to implementing in 2006.

Michelle Sweet is director of media relations for Ervin Bell Marketing Communications, ALTA's PR firm. She can be reached at msweet@ervinbell.com

MEDIA

When we began the campaign three years ago, the title industry was under heavy fire in the media because of the Radian mortgage impairment product and Radian's attempt to offer this title insurance product (supposedly at less cost, but with increased risk) without being licensed to do so. One negative headline after another appeared in newspapers across the country. It became painfully clear that most people, including the media, did not fully understand title insurance or the value it provides. This lack of understanding led to negative and inaccurate reporting.

During the first six months of the campaign we developed a comprehensive media kit explaining title insurance, the differences between title insurance and Radian's product, and why Radian's product was not good for lenders or consumers. The kit was distributed to nearly 500 real estate writers and editors of newspapers, magazines, and trade journals across the country. After the kit was sent, we spent considerable time and effort following up with the recipients to ensure they understood more about title insurance, which would lead to greater accuracy in their reporting.

It is vitally important to keep our positive momentum going. It is painfully clear that most people, including the media, do not fully understand title insurance or the value it provides.

We began to see the tide turn as more positive, thorough articles were published that explained our industry's side of the story. Also in our favor, Radian was finally defeated when a cease and desist order was ratified by the California Department of Insurance and the California Court of Appeal.

In the second year of the campaign, ALTA took a strong stand on HUD's proposed RESPA Reform, forwarding consistent messages to the media on ALTA's position early in the process. As a result, we gained significant credibility with the media, who

turned to us as a source of comment. We were invited to publish articles authored by Jim Maher in *USA Today*, *REALTOR®* magazine, and *Inman News*. We also wrote letters to the editor on RESPA for the *LA Times* and the *Wall Street Journal*. An article on title insurance bylined by Jim Maher was also sent to 130 consumer real estate magazines and 450 community newspapers. HUD's RESPA proposal was ultimately withdrawn, due in large part to the overwhelming opposition by ALTA, the National Association of Realtors, the National Association of Mortgage Brokers, and other key industry groups.

In 2005 our industry again came under fire because of the issue of reinsurance. Although ALTA did not take an official position on this issue, we took steps to shore up our industry's image and credibility. We closely monitored the proceedings in various states, with emphasis on California, where most of the negative articles originated (due to a strong and vocal position taken by that state's Insurance Commissioner). We distributed a white paper about title insurance (our value proposition) to the media and placed image advertising in the Los Angeles and Sacramento markets of *Time*, *Newsweek*, *Sports Illustrated*, and *US. News & World Report*. In January 2006 our ads are also running in these publications in the Washington, DC market.

In addition to working on important issues, our goal has been, and continues to be, to educate our publics through the news media. In 2004 more than a hundred pro-title industry stories appeared in the press. We haven't tallied the results for 2005, but we believe that we will have surpassed that number.

In 2006 we will continue to develop stories as we confront key issues, such as round two of RESPA reform, the mortgage impairment issue (a title insurance risk being insured illegally by Property and Casualty companies), and others. We will also continue our efforts to secure pro-title insurance stories in the general and trade press.

REGULATORS/LEGISLATORS

An important result of our media relations effort is that key regulators and legislators have been exposed to our messages. They have also received printed materials from the campaign, such as press releases and white papers. Many ALTA members hand-delivered our materials to members of Congress during the 2004 and 2005 ALTA Federal Conferences.

In 2005 a 30-second "image" commercial ran on CNN in the Washington, DC area for a one-month period. This commercial clearly and succinctly reminded consumers and legislators of our industry's commitment to protecting the American dream of homeownership. It aired on the following stations and shows:

- ***CNN***: Lou Dobbs, Larry King, Paula Zahn Now
- ***MSNBC***: Abrahms Report, Deborah Norville, Hardball
- ***FOX News***: The Fox Report, O'Reilly Factor
- ***News 8***: The Washington Report
- ***HGTV***: House Hunters, This Old House, Designed to Sell

In 2006 we will also consider advertising in key Washington, DC publications that reach elected officials on the Hill, and will work closely with ALTA's new legislative director to provide materials that can be used with this important audience.

REALTORS® & LENDERS

ALTA advertisements have been placed in *REALTOR®* magazine, *Mortgage Banking* magazine, *National Mortgage News*, and *Origination News*. Since the campaign started, we have placed 28 ads in these publications, with a combined readership of more than 1.2 million.

Educational articles on title insurance have been provided to the top realty franchises such as Coldwell Banker, Century 21/Cendant, and Remax, to help educate their agents and encourage them to talk to their clients about an Owner's Policy. They have also received brochures on the value of title insurance that they, in turn, can pass on to their customers.

We have secured commitments from Washington Mutual and Lending Tree to provide a description of title insurance on their Web sites, with a link to ALTA's Web site.

Additionally, we have utilized industry trade publications as a venue to promote ALTA's position on key issues. For example, we placed articles bylined by Jim Maher on RESPA reform in *REALTOR®* magazine and *Inman News*.

In 2006 we will continue to place bylined articles in key trade publications as well as promote the availability of our brochures, now available in Spanish, to real estate agents to pass on to their customers.

CONSUMERS

To reach consumers directly, we placed banner ads on *homestore.com*, a very popular site for consumers searching for a new home as well as for information about the homebuying process. We also ran an ad campaign on the Internet's most popular search engine, *Google.com*. The *Goggle.com* campaign allowed us to target consumers searching for information about the closing process by driving traffic to the consumer section of the ALTA Web site. In a three-month period of 2005 alone, the *Google.com* campaign drove nearly 18,000 home-buyers to the ALTA Web site.

Additionally, we ran the consumer "value" ad campaign for three months in Harmon Home's publications throughout the nation. Harmon Homes residential real estate magazines advertise homes for sale and are distributed for free from display racks located in supermarkets and other prime retail locations. Also, a 60-second video on the value of title insurance was distributed to 1,000 TV stations in December 2004.

An Article Library and on-hold messages for title companies to use in their businesses were also developed. See more on this later in this article. And, as outlined previously, the news media continues to be an important venue for reaching consumers.

GRASSROOTS EFFORT

One of the major thrusts of the campaign has been the grassroots efforts of our members. We introduced the cornerstone of the campaign—the Title Industry Marketing Kit—which has a variety of tools to enable members to forward consistent, positive messages about the title industry within their local markets. These materials can be customized so that members can use them to promote their businesses as well. The kit is free to ALTA members, and to date 2,098 kits have been sent out.

In addition to working on important issues, our goal has been, and continues to be, to educate our publics through the news media.

The elements of the kit include:

- A 12-minute video/DVD that can be shown to consumers as they wait to close or to local real estate agents or civic groups such as Kiwanis or Rotary
- A PowerPoint presentation complete with speaker notes
- Brochures that can be given to consumers or real estate agents
- Advertisements directed at Realtors®, lenders, and consumers
- Media relations tools, such as a press release template and sample articles that members can add their byline to and send to local newspapers

These tools can be customized with company names and logos, providing our members with professionally produced marketing materials. There's also a new Article Library with a number of articles on various topics for members to personalize and use with their local media. These materials can be downloaded directly from the ALTA Web site at *www.alta.org*. Samples of how ALTA members are customizing the ads from the kit are also available on the ALTA Web site.

CONTINUING EFFORTS

We've built a lot of momentum in the last three years! As we move into 2006 and beyond, it will be important to keep that momentum going. We must continue to reinforce our value proposition to legislators, regulators, consumers, lenders, realtors, and the news media.

Our goals going forward are:

- To continue to promote our value proposition among our target audiences, utilizing all of the tools at our disposal
- To counter negative messages and inaccurate statements in the media quickly and succinctly
- To proactively communicate ALTA's position on issues
- To continue to provide tools to ALTA members that enable them to promote their businesses while forwarding positive, consistent messages about the title industry

ACHIEVING FUTURE GOALS

To achieve these goals, we need the support of our members. As mentioned earlier, the five large national underwriters will match, dollar for dollar, all contributions made by to the 2006 campaign by ALTA agent members. With everyone's help, we can build on our previous success and continue to move forward as we face challenging times ahead. You can read more about the activities of the campaign in the ALTA News section of each issue of *Title News* or by going to the Public Awareness Campaign button on the right-hand side of ALTA's Web site. If you have any questions on the campaign or would like to order your free kit, send an e-mail to: *lorri_ragan@alta.org*.

Going Places.

Committed to national coverage. Our continued expansion into new markets across the country shows our determination to deliver a national title information system. With our growth comes the resolve to press farther and faster, providing single-seat technology to those key areas where more speed and efficiency are in demand.

www.edatatrace.com

LTI Online Training a Big Hit

Earlier this year, the Land Title Institute's Correspondence Courses moved to an on-line format. Learn how your employees can take advantage of these easy-to-use training programs.

by Patricia L. Berman

Since the Land Title Institute launched LTI Online in early 2005, enrollments in the title-specific Correspondence Courses have surged. More than 2,700 students have enrolled in one or both Courses, exceeding expectations of this new form of course delivery and testing. Students appear to be embracing the new Internet format to learn industry-specific terminology and practices and to take chapter tests and get immediate assessments of their progress. Course 1 is a basic Title 101 course; Course 2 is for more advanced students. Both courses are great tools to use in your employee training program. With tens of thousands of title professionals already completing LTI's courses in the past 35 years, it's now easier to enroll than ever before.

HOW STUDENTS ENROLL

Participants have two enrollment options: Sponsored Enrollment or Individual Enrollment.

Sponsored Enrollment—A sponsored enrollment means the student's employer or underwriter subsidizes the course. Sponsors share the cost of the course or prepay part of the course fee. There are two types of sponsor plans: the Employee Plan and the Agent Plan. Under an Employee Plan, the sponsoring company signs a contract for a minimum of 12 months and pledges to remit a monthly fee. Then the per-student course fee is discounted.

Under the Agent Plan, a wonderful benefit provided by five title insurance companies for their agents nationally, the underwriter shares the costs of the courses with its agents. Every month these five underwriters remit a sponsor fee to LTI, which entitles all their agents to participate in the LTI courses. The five title insurance companies which sponsor their agents are Fidelity/Chicago, First American, LandAmerica, Stewart, and United General.

Under sponsored enrollment (for both the Employee and Agent plans), students only pay $75 for Course 1 and $95 for Course 2. This is less than half the standard price of $180 or $205 for ALTA member students and less than a third of the $200 or $225 for non-ALTA member students. The cost saving to the student and agent is sizable.

Individual Enrollment—Individual students or small offices that do not qualify for a sponsored plan can enroll as either an individual student-ALTA member or individual student-non-ALTA member. As mentioned above, ALTA member students pay $180 for Course 1 and $205 for Course 2. Nonmember students pay $200 and $225.

PAYMENT AND ACCESS CODES

The majority of students are enrolled online by their employers using a credit card as payment. (However students can still enroll with a check or money order.) The LTI Online Testing Center *http://gateway.ilearning.com/altalti/* is the Web site for enrolling students and also where the students log in to access their course materials and take their tests. (See Exhibit 1) An access code is needed to complete the first enrollment screen. For information on access codes and enrollment, go to: *www.alta.org/lti/enroll.cfm.*

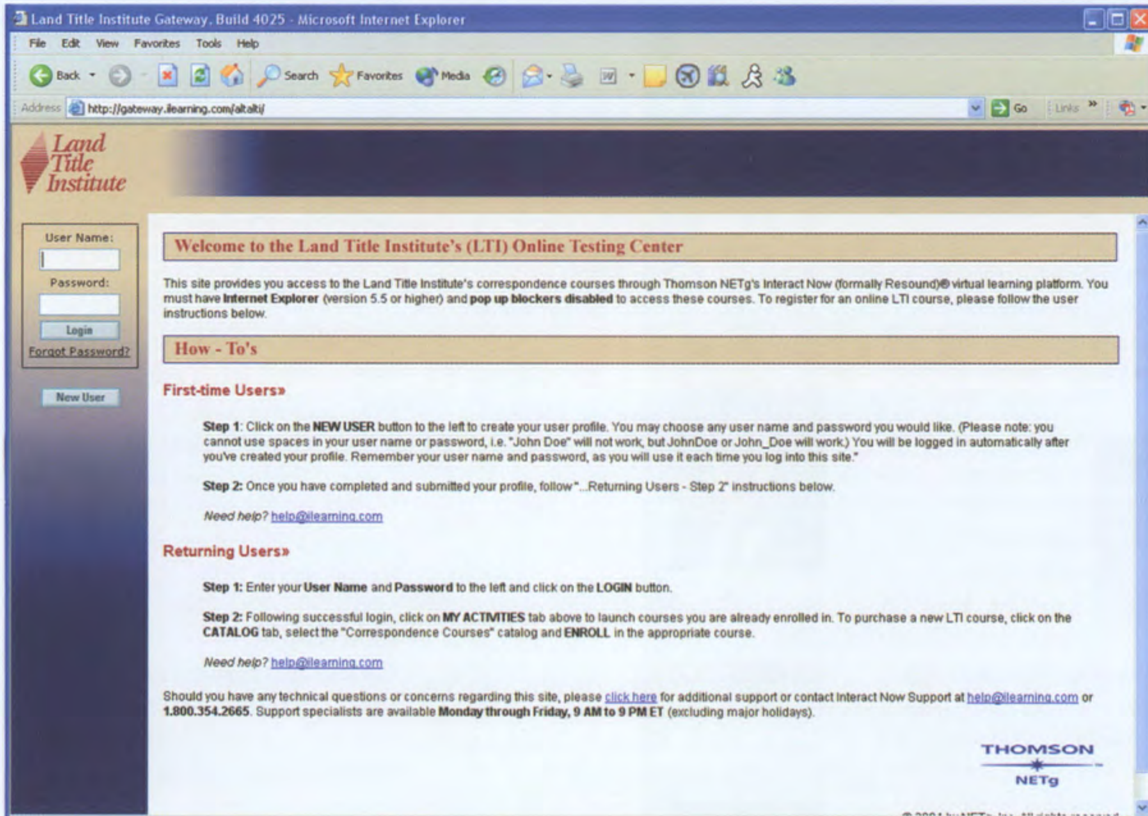
HOW DO THE COURSES WORK?

To get started, all the student needs is a computer with a Windows operating system, Internet Explorer, Adobe Acrobat Reader, and the ability to disable pop-up blockers. The chapter materials and tests "pop up" on the computer screen, so the ability to disable any pop-up blockers is important for the courses to operate properly.

Each student logs in with his/her unique user name and password and downloads the chapter texts, exhibits, and glossary. They are permitted to print these course materials,

Patricia L. Berman is director of education for LTI/ALTA. She can be reached at pat_berman@alta.org or 1-800-787-2582 ext. 215.

Exhibit 1



because who wants to "read" a couple hundred pages on a computer monitor? Chapter tests are delivered online, and when the students finish a test, they have immediate access to their score. Sometimes a test is failed. Because LTI wants the student to learn and understand the course content, a second attempt at a test is allowed if the student fails the first time.

For successfully passing (overall average of 70% or greater) the 18 tests in Course 1 and the 15 tests in Course 2, the student is awarded a Certificate of Achievement.

To help students through the process, they are encouraged to download the Detailed Student Instructions, which provide step-by-step introductions, including what hardware, software, and Internet connections are required to run the courses and instructions on how to enroll and navigate within the course module.

BOARD GAME PROVIDES ADDITIONAL TRAINING

A natural follow-up to the LTI Online courses in your employee training program is the board game, *Title Triumph® The Game of Land Title Knowledge*. Level One of the game coincides with Correspondence Course 1 and Level Two coincides with Course 2. Rather than self-study like LTI Online, *Title Triumph®* is a training tool geared for team building and group education. Your employees can play the game in 45-60 minute sessions and learn about title topics in a fun environment. For details about the *Title Triumph®* board game, go to: *http://www.alta.org/lti/triumph.cfm*.

If you have any questions about the Land Title Institute's Online Courses, *Title Triumph®* board game, or its library of educational videos, please contact me at: *pat_berman@alta.org*.

member news

Movers & Shakers

CALIFORNIA

Fred Gober has been promoted to senior vice president–commercial services for the west region for LandAmerica Financial Group, Inc., Los Angeles. Gober has more than 25 years of industry experience and has been serving LandAmerica as commercial services manager for Los Angeles and Orange County.

Stacey T. Bryant has been promoted to senior vice president of corporate development in the Lenders Advantage Division of First American Title Insurance Company, Santa Ana. Bryant began her career with First American in 1995 and worked for its subsidiary SMS Settlement Services, Inc., most recently serving as vice president-technology services for several First American Title divisions.

Lawrence A. Fried has been hired for the new position of director of operations and finance for First American's Emerging Markets Program. Fried comes to First American following two years as chief operating officer for RightNow Business Development Systems, Walnut Creek.

COLORADO

United General Title Insurance Company, Denver, has several announcements. **Joe Drum** has been promoted to executive vice president and chief operating officer. He will continue to be EVP/national agency manager.

COLORADO, CONT.

Doug Frate has been appointed senior vice president and chief information officer. Doug has more than 11 years of experience, most recently as vice president of information technology with another large title company. **Michael Gallaher** has been appointed senior vice president and chief financial officer. Mike brings more than 13 years of experience in the title and financial services industries.

Ronald R. Maudsley has been promoted to president and chief executive officer. He joined United General in the summer of 2005 as executive vice president and chief operating officer.

CONNECTICUT

CATIC in Rocky Hill has two announcements. **Carole W. Briggs** has been hired as claims counsel. Prior to joining CATIC, Briggs was a principal in the Briggs Law Firm in Marlborough. In addition.

Keith D. McNamara has been hired as director of industry relations. McNamara was vice president of retail sales for McCue Mortgage Company, New Britain, CT, prior to joining CATIC.

DELAWARE

Michelle Henderson has been appointed operations manager for Ticor Title Insurance Company, Wilmington. Most recently she was a quality analyst and acting supervisor with TransUnion Settlement Solutions.

ILLINOIS

Steven W. Brown has been promoted to senior vice president–residential services, midwest region for LandAmerica Financial Group, Inc., Chicago. Brown has more than two decades of industry experience, most recently serving as vice president–Illinois commercial services manager.

MICHIGAN

W. Scott Veit has been promoted to senior vice president–residential services, midwest region for LandAmerica Financial Group, Lansing. Veit has been serving LandAmerica as eastern Missouri area manager–residential services. He joined the company in 1993.

MINNESOTA

Patrick T. Harrigan has joined LandAmerica 1031 Exchange Services, St. Paul, as vice president. Harrigan comes to LandAmerica from Green Bay, WI, where he operated his own real estate law practice and title agency.

NORTH CAROLINA

Edmund T. Urban has been named vice president and state counsel for United General Title Insurance Company, Charlotte. Urban, a 32-year title industry veteran, most recently served as senior vice president and senior state counsel for a local title company.

OHIO

Kelly R. Westbury was promoted to president of FirstMerit Title Agency, Akron. Westbury joined FirstMerit in 1999 and most recently was vice president and manager.

member news

PENNSYLVANIA

Jody S. Jordan has been appointed vice president, eastern Pennsylvania/New Jersey area manager for Ticor Title Insurance Company, Westchester. Jordan brings six years of experience, most recently serving as agency analyst in New England for a major underwriter.

Chuck Travis has been appointed to the new position of assistant vice president, New Jersey state agency manager for Ticor Title, Malverne. Most recently Travis served as an agency representative for operations in Pennsylvania and New Jersey for a leading title insurance company.

RHODE ISLAND

United General Title Insurance Company has opened an office in Warwick and has hired two new staff. **John A. Comery** was hired as state counsel. Most recently he served as RI state counsel for another national underwriter and was in private practice for 15 years. **Laura Wild** was hired as vice president and RI state manager. Prior to joining United General, she worked for another national underwriter for more than 16 years.

TENNESSEE (correction)

Carol Humphrey has been named vice president and sales manager for Fidelity National Title Insurance Company's mid-south area. She will be located in Chattanooga. She has almost 25 years of experience in the title insurance business.

TEXAS

Amie M. Gilkey has been named commercial closing attorney for LandAmerica American Title, Fort Worth. Gilkey recently graduated from law school and passed the state bar exam.

Landata Systems, Inc., a wholly owned subsidiary of Stewart Information Services Corp., Houston, has two announcements.

Kelly Hawkins has been promoted to chief eXperience officer (CXO). This is a new designation for Stewart and the title industry. Previously, Hawkins was chief operating officer for Stewart Realty Solutions.

Mark Crump has been promoted to director of business services. Formerly he was director of business development.

VIRGINIA

LandAmerica Financial Group, Inc., Richmond, has two announcements. **Stephanie D. Fehr** has joined the company as vice president and purchasing manager—corporate resources. She has 17 years experience in purchasing and supply chain management, most recently working at Capital One Services as senior supply chain specialist. **Peter A. Habenicht** has joined as vice president—corporate communications. He has more than two decades of experience as a senior-level integrated communications management strategist.

Kudos

RamQuest Receives Recognition
RamQuest Software, Inc. has ranked Number 242 on the 2005 Deloitte Technology Fast 500, a ranking of the 500 fastest growing technology companies in North America. Rankings are based on percentage revenue growth over five years, from 2000-2004. RamQuest grew 647 percent during this period.

"Attracting enough customers to attain such fast growth over five years makes a strong statement about the quality of a company's product and its leadership," said Tony Kern, deputy national managing principal of Deloitte's Technology, Media & Telecommunications industry practice.

The Fast 500 list is compiled from Deloitte's 15 regional North American Fast 50 lists, nominations submitted directly to the Fast 500, and public company database research. To qualify for the Fast 500, entrants must have had 2000 operating revenues of at least $50,000 USD or $75,000 CD for the United States and Canada, respectively, and 2004 operating revenues of at least $1 million USD or CD.

Entrants must be a "technology company," defined as a company that owns proprietary technology that contributes to a significant portion of the company's operating revenues or devotes a significant proportion of revenues to the research and development of technology. Using other companies' technology in a unique way does not qualify.

member news

In Memoriam

Carloss Morris, advisory director, Stewart Information Services Corporation and chairman, executive committee, Stewart Title Guaranty Company, Houston, passed away on November 17, 2005. He was 90.

Carloss was born in Galveston, Texas, on June 7, 1915. He graduated from Rice Institute in 1936, receiving a BA with Distinction, and from the University of Texas in 1939, receiving a Doctor of Jurisprudence with highest honors. At the University of Texas, Carloss wrote for the "Texas Law Review," was a member of Phi Delta Phi honorary legal fraternity, Chancellors, Order of the Coif, a Keeton Fellow and a member of Alpha Tau Omega. Former Chief Justice Joe Greenhill of the Texas Supreme Court would later quip that Carloss was the reason he graduated second in his class.

Carloss married his childhood sweetheart, Doris, on December 2, 1939, having had his eye on her for half her life. Carloss and Doris celebrated 65 wonderful years of marriage on Earth and are now together again.

Their love gave life to four children, Marietta Morris Maxfield, William Carloss Morris III married to Sharon, Malcolm Stewart Morris married to Becky, and Melinda Ginter married to Dr. Glen Ginter. Carloss was blessed by his children with nine grandchildren and delighted in his nine great-grandchildren.

After building an outstanding trial practice in Houston, Dallas, and San Antonio, Carloss joined Stewart Title Guaranty Company as its president on the death of his father in 1950. He originally started working for Stewart Title at ten years of age, delivering land abstracts. Now joined by his brother Stewart Morris, this team led Stewart's expansion all across the United States. First expanding outside of Texas in 1956 to establish an agency operation in New Mexico, Stewart now has more than 8,000 policy-issuing offices and agencies nationwide and in 14 foreign countries. In 1972, Stewart Information Services went public. Carloss served as Chairman of the Board from 1975 to 2000 when Malcolm Morris was elected to the position.

Carloss drew up the B.M. Woltman and the Oldham Little Church Foundation articles and served on both of these boards. His father William C. Morris was a founder of Goodwill Industries in Houston, on which Carloss and William Carloss Morris III served as directors. Carloss gave tirelessly of his time, talent, and treasure, faithfully dedicating more than 55 years of service to Houston's homeless through the Star of Hope Mission, where he was chairman emeritus.

He was instrumental in the recruitment of world-famed heart surgeon Dr. Michael DeBakey to the Baylor College of Medicine, and he drew up legislation to qualify the Baylor College of Medicine for State funding. As Baylor's former Chairman of the Board, he continued to faithfully serve on its Board for 53 years until his passing.

Carloss worked to help found Houston Christian High School and was named to chair its fundraising efforts. He lived to see his dream of a quality Christian high school achieved. Of course he loved his church, and was a devoted servant to his pastors throughout his lifetime. He served as Chairman of the Deacons.

Carloss was the first outside director to serve on the Billy Graham Evangelistic Association and faithfully served with Billy Graham on the Board and Executive Committee since meeting Dr. Graham in 1954.

Carloss was a member of the Downtown Kiwanis Club, River Oaks Country Club, the University Club and the Downtown Young Men's Christian Association and was presented with the Book of Golden Deeds for outstanding and dedicated service to his fellow men by the Exchange Club of Houston.

In his professional life, Carloss was past chairman of the American Bar Association Young Lawyers, past president of the Texas Safety Association, and chairman of the Interdisciplinary Committee on Housing and Urban Growth from 1974 to 1977.

Carloss also chaired the American Bar Association Advisory Commission on Housing and Urban Growth examining the legal interrelationships among land use controls, planning, and housing to promote a more rational urban growth process. Members of the commission included Governor Pete Wilson of California and U.S. Senator Robert Graham of Florida. The commission published its findings in a book *Housing For All Under the Law* in 1978. It was widely disseminated to all major law schools and state legislatures. It is in the Library of Congress under catalog number 77-810.

Carloss was one of Texas' finest legal minds and a noted leader in the title insurance industry. Carloss was recognized by the Texas Land Title Association as Title Man of the Year in 1988. In 1995 Carloss and his brother Stewart were named to the Texas Business Hall of Fame for their work in building Stewart Title. Most of all, he loved "his title agencies" and took great delight in personally visiting as many as one hundred title agencies in one year. They, in turn, delighted in Carloss and looked forward with anticipation to his visits where they reveled in his wit and wisdom.

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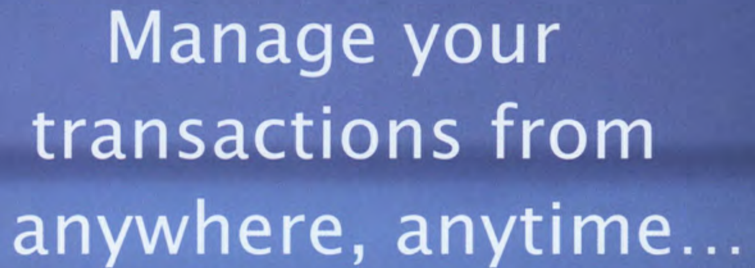

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