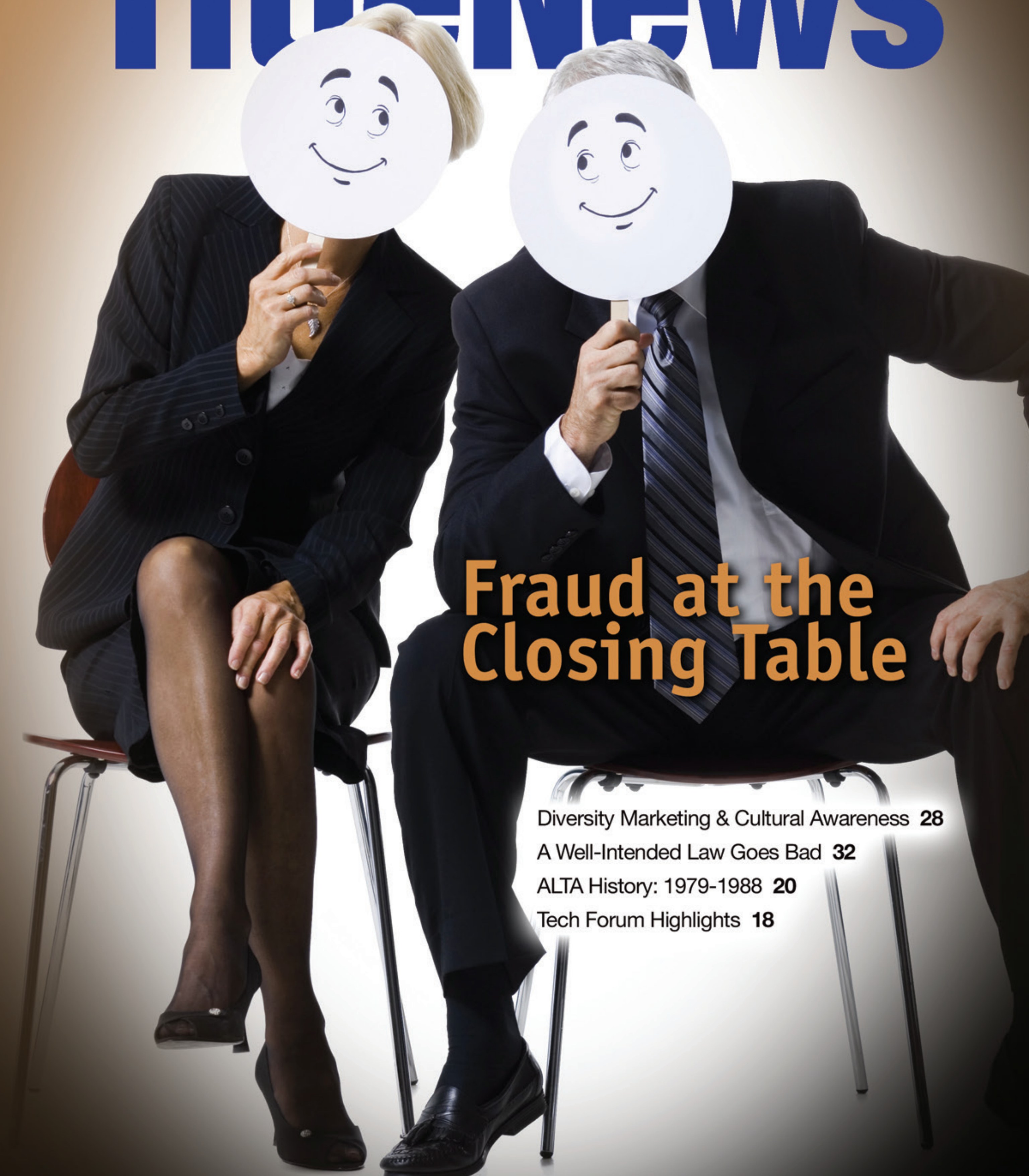
July/August 2007

TitleNews

Official Publication of the American Land Title Association



Fraud at the Closing Table

OLD REPUBLIC
Title Insurance Group

www.oldrepublictitle.com

Standard & Poor's AA | Moody's A1 | Fitch Ratings AA- | Demotech A" | As of 1/07

Old Republic National Title Insurance Company | Old Republic General Title Insurance Corporation | Mississippi Valley Title Insurance Company | American Guaranty Title Insurance Company

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Title News • Volume 87, Number 3

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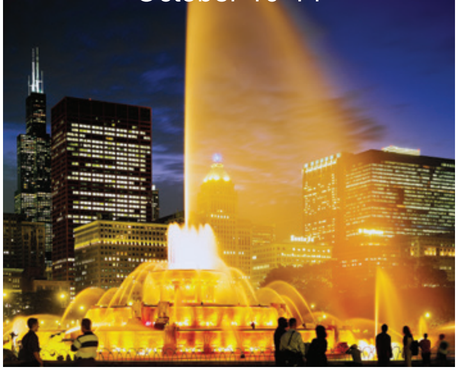
ALTA EVENTS

Date	Event
October 10-14	ALTA Annual Convention Hilton Chicago *Chicago, IL*

STATE CONVENTIONS

July 5 - 7	Utah
July 12 - 14	Illinois
July 15 - 17	Michigan
August 2 - 4	Idaho, Oregon, Washington
August 2 - 4	Montana
August 8 - 11	North Carolina
August 9 - 11	Minnesota
August 10 - 12	Kansas
August 12 - 15	New York
August 23 - 24	Wisconsin
September 6 - 9	Maryland
September 9 - 11	Ohio
September 12 - 14	Arizona
September 12 - 15	Colorado
September 13 - 15	Indiana
September 13 - 15	North Dakota
September 14 - 16	Dixie Land *(AL, GA, MS)*
September 14 - 15	Missouri
September 19 - 21	Nebraska
November 14 - 16	Florida
December 6 - 8	Louisiana

ALTA ANNUAL CONVENTION
Hilton Chicago • Chicago, IL
October 10-14



TitleNews

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AMERICAN LAND TITLE ASSOCIATION

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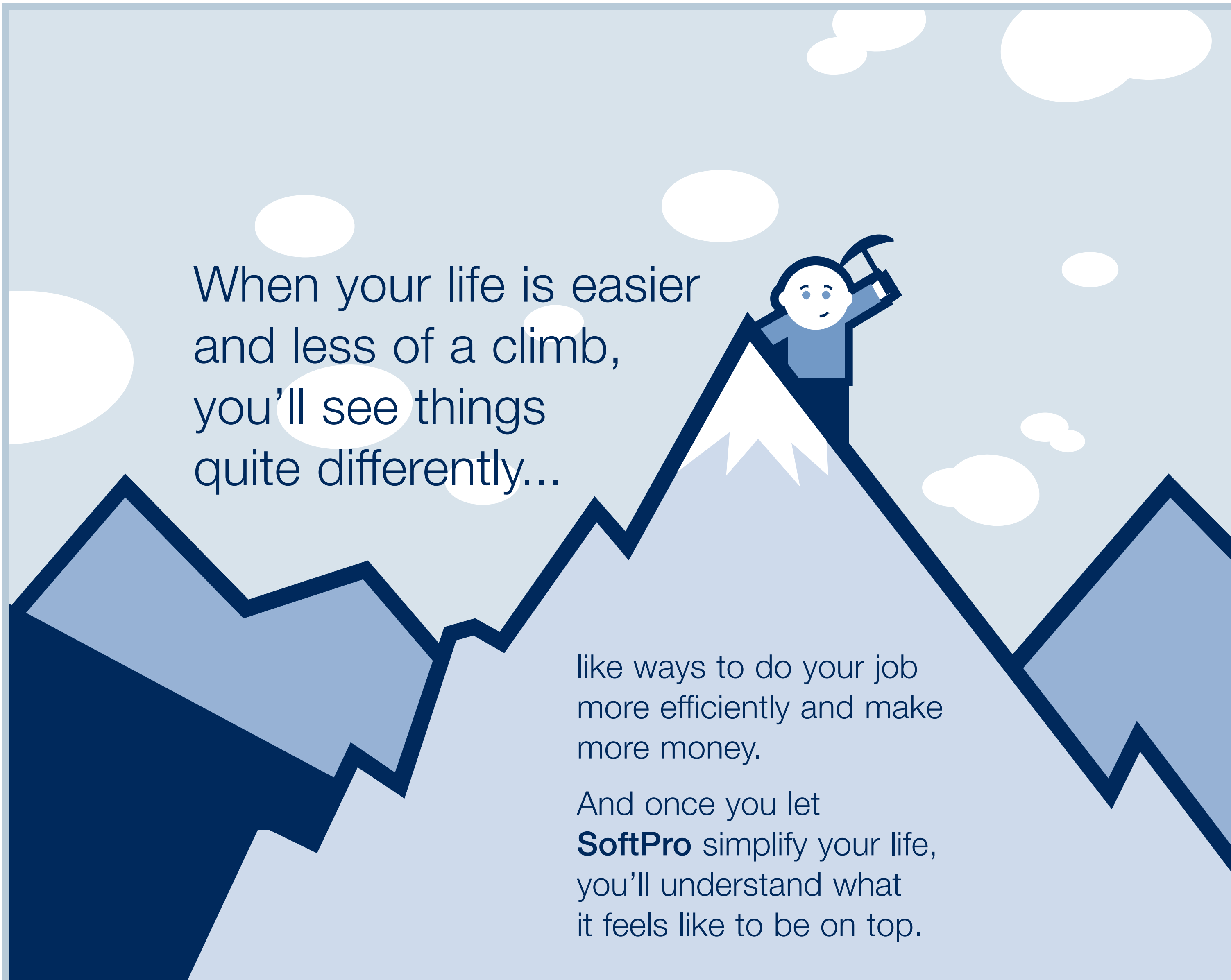
Visit ALTA Home Page: www.alta.org • E-Mail Feedback to: service@alta.org



The top of the mountain. The view is better from up here.

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point of view

I Sell Title Insurance

I sell title insurance.

Some people don't like to say they "sell" for a living, much less that their product is title insurance.

I sell title insurance.

I "sell" it because I believe in it. Selling is explaining. Selling is providing information relative to the good points of the product. Selling is providing peace of mind.

I sell title insurance.

I do not hang my head and apologize for selling title insurance. I provide a thorough and accurate search of the title, resolve ownership issues, provide lien records, keep the courthouse records accurate, collect unpaid child support, facilitate collection of government taxes and assessments, and require proper conveyances and acknowledgements. My work keeps the housing market and the overall economy from being bogged down by inaccuracy, uncertainty, and fraud. My vocation protects my neighbors from falling into disruptive disputes over their property rights. My community is better for the work I do.

I sell title insurance.

I cannot imagine allowing a family member, friend, or acquaintance to purchase real estate without insisting on title insurance. And not just any title insurance. I want them to have a well-searched title policy, because I know how disruptive and unsettling a claim can be. I want my family and friends to pay for a policy that they never have to use. I hope the same thing for them regarding their fire insurance.

Our industry is constantly being criticized for our low claims payout. I salute every title insurance agent who has made that happen! Our good work keeps our customers…our friends and neighbors… from experiencing claims. We have done our job. Well-done.

Benjamin Franklin is often quoted as saying "an ounce of prevention is worth a pound of cure." Those wishing for a change to the metric system might wish to parse words with Franklin, but the fact remains, title agents are the "ounce of prevention" that enable one of our country's greatest privileges...Home Ownership.

Yes, our industry has its critics. Yes, our industry has those whose bad practices should be eliminated. Yes, our industry needs to be proactive in demanding ethical market practices. But our industry should never allow anyone to characterize the overwhelming super majority of our work as anything other than the protection of the American dream.

I know my product. I know its value. I know the importance of the process.

I sell title insurance.

– Michael B. Pryor

news

Escrow Accounting Online Course Debuts

A new self-study course designed to teach your employees managerial practices to minimize risk when handling escrow funds is now available online.

Students will learn how fiduciary applies to escrow holders, how to identify the basic elements of internal control, and to take steps to limit risks from fraud, forgery, and unauthorized or improper wire transfers. The course also includes a 70-page resource guide with pertinent information, including an introduction to Check 21, an introduction to the USA Patriot Act, and sample reconciliation worksheets.

The course, developed by the Land Title Institute, can be taken in approximately two hours. The price for ALTA members is $75 per student. Non-members pay $100 per student. To enroll online, go to www.alta.org and click on Land Title Institute on the lefthand side.

Save $500 on Your ALTA Dues

Sound too good to be true? It *is* true; you can save $500 on your 2008 ALTA dues simply by sending us examples of how your curative work cleared a title defect or saved someone from having to file a claim.

We need these stories to further demonstrate the value of what we do to regulators, legislators, the news media, and others who often measure what we do only by the claims paid, when our true value is in the claims we prevent. Your stories can be examples of specific curative actions you took prior to closing or problems you took care of after a homeowner moved in. We need them all.

The three companies or people who send in the most stories will receive $500 off their 2008 ALTA member dues. To submit your stories, look for the box on the right-hand side of ALTA's home page.

The deadline for submission is August 31. Winners will be announced in ALTA's News You Can Use, *Title News,* and at the ALTA 100th anniversary convention, October 10-13, in Chicago. Ready, set, enter! Questions? Contact Lorri Ragan at lorri_ragan@alta.org or 800-787-2582, ext. 218.

ALTA Sends Letter to HUD and NAIC

ALTA sent letters to HUD and the NAIC indicating support for the recommendations made in the GAO report on title insurance that was released in April. ALTA generally supports the recommendations for executive action and looks forward to working with regulators to ensure that any proposal will be amenable to the title industry and balance the need for regulatory action with the ability of small business members to meet regulatory burdens.

news<

Prior Loan and Owner's Policies Decertified

ALTA has "decertification" of those versions of its Loan and Owner's Policy forms dated 10-17-92 and most of the accompanying endorsement forms that are not designated with "-06" at the end of the form name. This action was taken in June 2006, with a delayed effective date of June 17, 2007, to permit implementation of the new forms by the title and lending industries.

The effect of this decertification action is that ALTA will no longer recognize such earlier forms as official ALTA forms. However, ALTA recognizes that the prior forms continue to exist and individual insurers have prior policy form stock in the marketplace. Moreover, at least for some time, customers may request (or regulatory approval may mandate the use of) some earlier ALTA forms. Therefore, for the time being, we will maintain an archive of these earlier forms on the ALTA Policy Forms Online service on our Web site for the convenience of our subscribers to this service.

We acknowledge the recent action of Freddie Mac in delaying, until January 1, 2008, the required use of the '06 ALTA Loan Policy and that Freddie Mac "strongly encouraged" the immediate use of that form during the interim period while permitting the continued used of the prior 1992 ALTA Loan Policy.

Plan Now to Put On Your Hard Hat and Work Clothes

Work gear will be needed for attendees at ALTA's Annual Convention, October 10-13, in Chicago. Well, for some at least. ALTA is sponsoring a Habitat for Humanity home with the Windy City Habitat for Humanity Chapter. ALTA members will have the opportunity to help with the build on various days during the convention. If you are interested, look for a sign-up sheet in the registration materials for the Annual Convention sometime this summer. Get your work clothes ready!

Windy City
Habitat for Humanity®
Chicago, Illinois

Optional Federal Charter Bill Reintroduced--Title Language Exclusion Added

Senators Tim Johnson (D-SD) and John Sununu (R-NH) reintroduced the "National Insurance Act of 2007" (S. 40). This bill would create a new federal insurance regulator within the Treasury Department and authorize an optional federal insurance charter for life and property/casualty insurers and agencies.

This year, language was added to the bill that would define title insurance (Section 3 (45)) and create a federal monoline limitation for property/casualty insurers (Section 3 (34)). Although unlikely to move this Congress, should it happen, title insurance would be protected. ALTA remains opposed to a federal insurance charter at this time and belongs to a coalition of insurers, agents and consumer groups opposed to the creation of a new federal bureaucracy to regulate insurance.

International Affiliate Joins ALTA

The ALTA Board welcomes its first international association as an affiliate member. The Title Insurance Industry Association of Canada was formed in March of this year.

The purpose of the association is to promote the common interests and concerns of the title insurance industry in Canada to provide information and education to its members and the public, and to advocate for the betterment of and on behalf of the title insurance industry.

CENTENNIAL NEWS

Presidents Roll Call

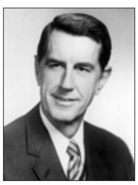
LOOK FOR THIS SPECIAL PRESIDENTS ROLL CALL SECTION IN EACH ISSUE OF TITLE NEWS THIS YEAR, WITH A LISTING AND PHOTOS OF ALL ALTA PRESIDENTS. HERE ARE THE PRESIDENTS FROM 1967 THROUGH 1987.

Alvin R. Robin
1967 - 1968
Tampa, FL

Gordon M. Burlingame*
1968 - 1969
Bryn Mawr, PA

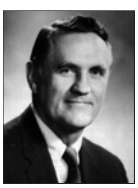
Thomas J. Holstein*
1969 - 1970
La Crosse, WI

Alvin W. Long*
1970 - 1971
Chicago, IL



John W. Warren*
1971 - 1972
Newkirk, OK

James O. Hickman*
1972 - 1973
Los Angeles, CA



Robert C. Dawson
1973 - 1974
Richmond, VA

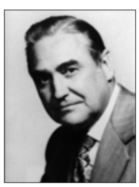
Robert J. Jay*
1974 - 1975
Detroit, MI

Richard H. Howlett
1975 - 1976
Los Angeles, CA

Philip D. McCulloch*
1976 - 1977
Dallas, TX

C.J. McConville
1977 - 1978
Minneapolis, MN

Roger N. Bell
1978 - 1979
Wichita, KS



Robert C. Bates
1979 - 1980
Chicago, IL

James L. Boren, Jr.
1980 - 1981
Memphis, TN

Fred B. Fromhold*
1981 - 1982
Philadelphia, PA

Thomas S. McDonald*
1982 - 1983
Sanford, FL

Donald P. Kennedy
1983 - 1984
Santa Ana, CA

Jack Rattikin, Jr.
1984 - 1985
Fort Worth, TX

Gerald L. Ippel
1985 - 1986
Los Angeles, CA

John R. Cathey
1986 - 1987
Durant, OK

*deceased

CENTENNIAL NEWS

Centennial Gems

Q. What did the Washington Post say smelled "a lot like kickbacks" in 1979?

A. Certain controlled business arrangements.

Q. Which U.S. President proposed to revive the housing market by removing restrictions on controlled businesses?

A. Ronald Reagan

Q. How many ALTA members wrote to President Reagan expressing outrage at his controlled business position?

A. 300 ALTA members wrote letters.

Q. Which government entity wanted to enable federally chartered savings and loan service corporations to operate as title insurance underwriters?

A. The Federal Home Loan Bank Board

Q. Why did ALTA form an E&O Insurance Company in 1988?

A. To bring long-term stability for title professionals seeking E&O coverage. The Title Insurance Assurance Company, TIAC, is an independent risk retention group wholly owned by the members of ALTA.

Q. Who started the Land Title Institute and in what year?

A. Hart McKillop, an ALTA Honorary Member from Winter Haven, FL, started the Land Title Institute in 1970 to provide educational correspondence courses for title professionals. LTI was given to ALTA in 1980 and was relocated to ALTA's headquarters in 1989.

Oh The Places We've Been!

Many ALTA members say it is fun to reminisce about the wonderful convention locations over the years. Look for this special section in every issue of *Title News* this year listing the places we've been!

1967	Denver, Colorado
1968	Portland, Orego
1969	Atlantic City, New Jersey
1970	New York, New York
1971	Detroit, Michigan
1972	Houston, Texas
1973	Los Angeles, California
1974	Bal Harbour, Florida
1975	Chicago, Illinois
1976	Seattle, Washington
1977	Washington, D.C.
1978	Boca Raton, Florida
1979	San Francisco, California
1980	Honolulu, Hawaii
1981	Colorado Springs, Colorado
1982	Boston, Massachusetts
1983	Boca Raton, Florida
1984	Reno, Nevada
1985	San Antonio, Texas
1986	Los Angeles, California

Is Your Company 100 Yet?

If your company has celebrated, or is about to celebrate, 100 years, we want to know about it! We have a special Centennial Directory on the 100th Anniversary Web pages, and we'd like you to add your information.

Click on the 100th Anniversary Logo on the home page to find more information about ALTA's anniversary and the Centennial Directory. You will also be able to read ALTA's history, add your thoughts to the Time Capsule, and order items with the 100th anniversary logo. We want to hear from you.

Mortgage and Real Estate Fraud- Is Anything New?

The greed that causes people to commit fraud is nothing new. However, in real estate fraud schemes it is no longer one person committing the crime; there are groups of people involved. Learn how to spot them and avoid the risk of becoming a victim.

The primary reason folks steal and commit fraud is greed. Why do they steal from mortgage companies and title agents? Willie Sutton, the infamous bank robber, was once asked why he robbed banks, to which he replied, "That's where the money is." Nowadays that also applies to the mortgage lenders and title companies that close the transactions. According to Fannie Mae, title agents handled upwards of $2.4 trillion in mortgage loans in 2006 on 1-4 family dwellings alone, not to mention the amount from commercial transactions. Many title companies handle more money in a year than a small bank. And the title industry has far less regulation than banks have — a fact that does not go unnoticed by the bad guys. >>

by Lynn Wilburn

Unlike banks, very few title companies have surveillance cameras, bank guards, silent alarms, or even access to instant background data on their customers. And they certainly don't have the instant help of the FBI, OCC, FDIC, and a half dozen other alphabet-soup agencies ready to pounce at the slightest scent of a fraud. In fact, trying to get prosecution on a white-collar crime case that did not happen in a federally insured financial institution can be a monumental task. For all these reasons and more, title insurance agencies and underwriters are a primary target for thieves and con men.

There are new technology advances in our business virtually every day. Digital technology has given us encrypted transmissions, digital signatures, and what appear to be endless safeguards for the real estate closing process. Of course everyone knows that when you buy a new computer, you just about get it installed before it is outdated and a newer, faster, more complex version is already available. We even invent new words to describe these technological advances or make them sound spiffy to impress the competition. Certainly electronic closings, for example, are a new way of life in the industry and, make no mistake, they will be scrutinized by the crooks for any loopholes or backdoors that might allow them to steal. But all the electronic updates, computer security, firewalls, and other technological enhancements to the real estate closing process will not be enough to prevent fraud without vigilance by the lender, the title agent, and the people that work for them.

Follow the Rules

Buried in this paragraph is the secret to preventing the vast majority of all fraud and theft and wrong doing perpetrated in the real estate industry. It's not a new concept or some technological discovery or even a cutting-edge revelation. It is a simple axiom that has been around for a very long time and has always worked: "Follow the rules you have in place."

The bad guys are very good at convincing others to bend this rule or overlook that one or cut a corner or two.

You could paper the walls of your office with all the bulletins, e-mails, pamphlets, brochures, industry publications, and other documents that have been heaped upon you by title insurers, mortgage lenders, industry associations, law enforcement, and endless other sources that tell you how to avoid fraud losses and prevent theft. All these documents constitute the "rules in place." Unfortunately, the bad guys (and women) are very good at convincing others that it's OK to bend this rule or overlook that one or cut a corner or two. An examination of some of these con men and their tactics will, hopefully, provide you with some added knowledge that may well prevent you from becoming a victim.

Never a Lonely Task

A successful mortgage fraud (or most other frauds in the real estate industry) almost always require more than one person, usually, several. Members of the fraud fraternity can include mortgage brokers, mortgage lenders (employees), real estate agents, buyers, sellers, appraisers, title agents or their employees, and others. Some of the "rules in place" discussed earlier make it difficult for one person to control enough of the real estate transaction to successfully commit fraud, but when they act


Hope Lies
Ahead

in concert, it all comes together. A worst case scenario might include a real estate agent hiding information about a property, buyer, or seller; a mortgage broker preparing a falsified mortgage loan application; a title agent failing to disclose information to the lender; a lender's employee acting in concert with a broker; a bogus appraisal, and on and on.

Often these groups are drawn together and stay together because of their common interest. It is no different from us spending time with friends because of a common interest such as church, golf, or other hobbies. All too often the same group of crooks is found to be committing fraud repeatedly against the same title agent and/or lender because they have a common interest. Their scheme works well and they have found an agent or lender that continues to be vulnerable. The presence of such a group doing business with a lender or an agency is itself a red flag.

The Players

First, it should be noted that the vast majority of people in the real estate industry are honest, hard-working and law abiding. There is, however, that segment in every profession that seems to want to do it the wrong way. Here, in no particular order, is a description of that small minority and how they contribute to fraud. It is important to remember, however, that any one of these parties to the transaction may also be a victim by someone forging their name or altering a document without their knowledge.

Mortgage broker- The broker usually has control of the loan application and qualification process. An unscrupulous broker is in a position to falsify information to make sure the prospective "borrower" qualifies. On occasion, we have found that the borrower was not even aware that his loan application was fraudulent because the broker had him execute a blank application to be filled in later. That may include falsifying all or part of the application. Loan packages forwarded to lenders by brokers may also contain forged, fraudulent, altered, or omitted documents to qualify the borrower for the lender. In sophisticated schemes, the mortgage broker will also solicit "straw buyers" who are paid a fee or percentage for use of their credit, appraisers who will falsify appraisals, or lender's employees who will participate in the fraud.

Mortgage lender employee- Often, through bribery or a cut of the profits, an employee is enticed to aid in the fraud by ignoring the lender's requirements or even participating in the falsification of documents.

Appraiser- For an exorbitant fee or percentage of the profits, the appraiser will deliver an appraisal well in excess of the property's value. Often, the appraiser never sees or researches the property but rather places the value at the figure requested by the lender or someone else in the scheme.

payments, falsify documents relating to the value, condition, marketability or title to the property, and/or utilize fraudulent identity.

Buyer- Some buyers will knowingly execute falsified loan applications and submit multiple documents at closing, indicating that they will occupy the property as their residence and that the closing statement represents a true and correct disbursement of the funds when they know otherwise.

Title agent (or employee)- The title company or its employees may issue commitments that do not show the true owners in an effort to conceal flip transactions, record documents out of sequence to deceive lenders, fail to disclose second mortgages, fail to disclose disbursements that were unauthorized, and/or accept documents that are questionable or unacceptable in order to facilitate the transaction.

A successful mortgage fraud almost always requires more than one person, usually several.

Real estate agent- Seeing multiple commissions and/or a percentage of the profits as the payoff, certain unscrupulous real estate agents have been willing to overlook obvious violations and participate in locating properties, buyers, and sellers for the scam. The same persons will also falsify and/or alter and/or forge real estate sales contracts and other documents relating to the condition of the property or, in some cases, even the existence of the improvements on the property.

Seller- In ongoing mortgage scams, sellers may "kick back" down

While there can be others in the mix (developers, bankers, notaries, etc.), these are the primary players found in all or part of most mortgage frauds.

The Red Flag Theory

Detecting fraud entails examining the loan application and closing process and looking for things that don't belong, seem out of place, or are obviously improper. Finding

one red flag may or may not mean that there is a problem, but as the number of problems increases, so does the probability that a problem exists. When the number of red flags increases, it is time to take serious notice. Of course, all the red flags discussed here will not be in every file.

Describing and examining specific acts of mortgage fraud entails a much more detailed examination of the people and documents involved in the lending and closing process than is possible here. There are, however, a few specific areas that can be addressed.

Beware of the same group of persons in multiple transactions.
Certainly, there are legitimate groups of investors and those that assist them, but for every one legitimate group, there are several that are not so legitimate and are composed of some of the players mentioned earlier in this article. Here are some areas of possible concern in the latter groups.

New Clients

A new unsolicited client could come to you for a variety of reasons: better products or service than the competition, better location for the client, or referral by an existing client. Sometimes, however, it is for more sinister reasons. It could be because the new client is a crook. He may have been caught doing something wrong at the previous place he did business or he may have discovered that your business affords him the opportunity to commit fraud. If the reason he has chosen you to do business with is not readily apparent and legitimate, you would do well to find the answers to a few questions.

- Why did he quit doing business with the previous company?
- What is his reputation in the community or industry?
- What do your competitors know about him?
- Is there pending litigation against him or press coverage about him?
- Who are the individuals employed by or associated with him?
- What are his business practices?

Old Clients

Sometimes existing clients change the way they do things. Most of the time it is for legitimate reasons to increase productivity and profit. With crooks, however, it may be to cover up fraud.

Best Customer

Everyone has one. What would you do for your best customer? It's just good business practice to do a little extra for the customer that is responsible for a good portion of your income. If however, they begin to ask for questionable "favors" or begin to utilize questionable business practices, investigate. They could simply have become lax in their oversight, but there may be a scam in the making.

In short, know who you are doing business with.

Identity Theft in Mortgage Fraud.

Recently there has been much concern about the use of stolen identities in mortgage transactions, and it is a legitimate concern. One fact, however, remains true. The vast majority of identity theft in these transactions is committed by someone who is known to the victim. It is often a family member or friend or business associate, all of whom have ready access to the victim's identity. Use of an identity stolen from an unknown person is, however, on the rise and must be addressed.

There are some very practical ways to combat the use of fraudulent identities, particularly at the closing table.

If the person appears nervous or is acting suspiciously, take the extra step to be sure that he is who he says he is.

Educate Your Employees.

The most common proof of identity presented is a state-issued driver's license or identity card. All too often, in mortgage fraud, that document is false. Every state will provide detailed information as to what their respective documents should look like, usually providing color brochures on how to determine if the document is false. There are also Web sites for most states with the same information. Beyond that, there are some very basic steps that often detect a fraud.

Examine the Document Presented for Identification Very Carefully.

Everyone is busy including those who handle real estate transactions. Because of that, all too often, when a license or other document is presented to employees, they just make a copy of it and put it in the file without examining it, missing a prime opportunity to stop a fraud. Look at the license/ID and examine it carefully.

- Does the picture look like the person presenting it?
- Is the person presenting it near the age indicated?
- Does the signature at closing appear to be the same as the one on the license/ID?
- Do the buyer's and seller's signatures match the sales contract?
- Does the seller's signature appear to match those on previously recorded documents in the chain of title?
- Is the address the same as that provided in other documents?
- Has the ID expired?
- Has it been tampered with?
- Does the ID appear to be the same as others you've seen for the same state?

Verify Social Security Numbers.

There are available databases to verify the authenticity of the social security number and whether or not it

has been used in frauds or is suspect. Those databases are not all encompassing but are at least a measure to utilize in detecting those numbers already suspicious.

Follow Your Instincts.
If the person appears nervous or uneasy or, in your experience, is acting suspiciously, take the extra step to be sure that he is who he says he is.

Request Additional Identification.
If the ID presented is questionable and/or the individual is acting suspiciously, ask for additional forms of ID such as passports, credit cards, original social security cards, employee photo ID badges, or verification by someone known and trusted by you that can verify that the person is who he says he is.

What Does the Con Man Look Like?

Of course there is no one-size fits all description of a con man or woman, but there are a few characteristics that show up all too often and bear watching for. Remember, not everyone with one of these characteristics is automatically one of the bad guys.

Intimidating or Pushy
Now, I know I just described half of your customers; however this characteristic could be a problem. When the con is pushy, it is to intimidate you to do something that you should not do, such as accept a document executed outside your presence and then delivered to you, or disbursing funds inappropriately (for example, early or without good funds, perhaps to someone not disclosed in the closing statement).

Always in a Hurry
The intent is to rush you and make you overlook details or due diligence or questionable factors in the transaction such as proper ID or forged documents.

Dangling the Carrot
Promises of big deals to come if you will do this one now and bend a few rules. The promises can run the gamut: a big commercial deal or a new development or the business of a new lender or investors and on and on.

Name-dropper
Mentions big names or big deals (none of which are usually verifiable) to impress you and make you believe he is someone that he is not or that she is a person of means when she is not.

Engaging
He or she may be extremely personable to distract you from the tasks at hand so that you do not notice questionable factors.

I've Got Money
Gives the impression of significant wealth with the intent of giving you a comfort zone he is knowledgeable and honest. All too often the victim of a fraud has stated, "I thought it was OK because he had so much money."

There are other characteristics such as sympathy or empathy that are also utilized when helpful to the con.

Is There Anything New in Mortgage Fraud?

Yes and no. The greed that causes fraud and the necessity to involve multiple individuals to commit fraud is still alive and well. Yes, there are more ways to electronically access personal information used in frauds and information necessary to commit frauds. As Internet access increases, so will the ability to steal information that will aid in fraud. As of this writing, many companies (national, regional, and local) are scrambling to bring electronic fraud detection measures online that will detect and deter such activity. Frauds are more sophisticated by virtue of electronic enhancement.

Addressing the problem at the point of loan application and closing is still the most effective control, which brings us back to the secret of fraud prevention, "Follow the rules you have in place." To be sure, technological advances and safeguards will be most helpful, but as long as there is a human element, it will take real folks being very diligent to combat the problem.

Lynn Wilburn is president of Wilburn Investigations, Inc., in Houston, TX. This article is a follow up to his presentation at ALTA's Tech Forum 2007. Lynn can be reached at lwilburn@wilburninvestigations.com.

Steve Wozniak, co-founder of Apple Computer and developer of the first Apple I and II, regaled the audience with stories about his early passion for technology when the government was the only entity that could afford computers.

Todd Rowe from Microsoft gave attendees a sneak preview at the new Windows Vista and Office 2007 products.

Technology Gurus Address ALTA

Attendees had fun while learning about new products in the Exhibit Showcase.

Everyone was eager to learn how new technology could benefit them.

This was a typical scene as ALTA members wanted to learn more.

Presentations topics ranged from “Bridging the eMortgage Gap,” to “Transforming Your Business with VoIP,” to “Workflow and Process Re-Engineering.”

AMERICAN LAND TITLE ASSOCIATION

ALTA TECH FORUM 2007

A TITLE MANAGEMENT & TECHNOLOGY CONFERENCE

Attendees were serious about their education at this meeting.

ALTA marketing manager Rachael Barnum congratulates Greg Aschoff of Scott Abstract in Nebraska, who won the iPod Nano and Boze SoundDock system.

BY WILLIAM J McAULIFFE, JR.

The Way We Were 1979 – 1988

The issues of controlled business and nonbanks trying to get into the title business were the focus of this decade in ALTA's history.

The Evils of Controlled Business

"Unless prompt corrective action is taken, problems of controlled business across the nation threaten to increase settlement costs for homebuyers while undermining the quality of title insurance." This was the message that came out of an ALTA seminar, held on November 13, 1979, in Washington, D.C., for congressional and federal agency personnel.

A controlled business arrangement was defined as one where certain real estate professionals, such as brokers, lenders, attorneys, builders, or developers, used their position of influence regarding the consumer's selection of a title insurance provider to financially benefit themselves rather than the homebuying consumer.

In a December 12, 1979, *Washington Post* article on costs relating to land titles, certain controlled business arrangements were said to smell *"a lot like kickbacks."*

In a letter of response to this article, ALTA President Robert C. Bates, executive vice president, Chicago Title Insurance Company, Chicago, IL, said that controlled business arrangements *"are as harmful as the payment of outright kickbacks prohibited by Congress under Section 8 of RESPA."* He stated that the American Land Title Association clearly and unequivocally opposed controlled business arrangements, and HUD should issue regulations to eliminate the problem.

The Federal Home Loan Bank Board, lenders, and attorneys disagreed with ALTA on this issue.

Nevertheless, on July 28, 1980, HUD issued an Interpretative Rule under Section 8 of RESPA, which stated that controlled business may be a violation of Section 8.

HUD defined controlled business as *"an arrangement whereby a person in a position to refer settlement business (typically a real estate broker, mortgage lender, attorney, etc.) has an ownership interest in a settlement service provider, refers business to that provider, and shares in the profits of that provider through direct or indirect distributions."*

Robert C. Bates, by letter, informed the HUD Secretary that ALTA supported the Interpretative Rule.

In September 1981 the House Housing and Development Subcommittee held hearings on controlled business. ALTA President James L. Boren, Jr., president, Mid-South Title Insurance Corporation, Memphis, TN, and four other title insurance agents appeared before the committee. They described the evils of controlled business and the need for comprehensive legislation to address this problem.

On March 29, 1982, at a meeting of the National Realtors Association, President Ronald Reagan stated that the administration was *"taking action to remove restrictions on controlled business so as to allow real estate brokers, among others, to establish subsidiaries to provide "additional services, such as title insurance, that are necessary to complete the purchase of a home."* This was one of his proposals to revive the housing market.

ALTA put out a "red alert" notifying members of the administration's controlled business position. ALTA members were asked to communicate with President Reagan, HUD Secretary Samuel Pierce, and their congressional delegations. Over 300 ALTA members wrote to President Reagan expressing their outrage at his controlled business position.

On March 31, a *Washington Post* article, under the headline "Reagan Urges Realtor 'Kickbacks' on Referrals to Title Companies" stated that the administration's proposal may *"provide*

Title Industry representatives testified at the House Subcommittee hearings on controlled business

a bonanza for real estate companies by taking business from independent title insurers and money from the homebuying consumer without doing anything for the devastated housing market." The Post article concluded by stating that the title insurance industry was particularly susceptible to anticompetitive practices *"because so few homebuyers know enough about it to shop around for the lowest prices."*

In a March 31 letter to President Reagan, ALTA President Fred B. Fromhold, president, Commonwealth Land Title Insurance Company, Philadelphia, PA, expressed ALTA members' "shock and dismay" at President Reagan's controlled business position. Fred Fromhold further stated: *"We find it impossible to understand how opening the floodgates to the payment of kickbacks or to tie-in relationships between brokers and title companies can have any possible impact on stimulating the housing market."* President Fromhold concluded his letter by stating that the administration's proposed action would only create a market in which business would have to be bought rather than earned.

In response to President Fromhold's letter, HUD Assistant Secretary Phil Abrams disagreed with the ALTA position. He stated that administration officials met with interested groups to discuss the issue and concluded *"the removal of the prohibition against controlled business relationships will stimulate competition within the settlement services industry."*

The National Association of Realtors held a press conference disassociating themselves from the President's remarks on controlled business. Julio Laquadra, president of the Realtors, said his industry *"didn't seek the change and, in his opinion, only a few real estate brokers would enter the title insurance business."*

On April 1, Housing Subcommittee Chairman Henry Gonzalez (D – TX) opened a hearing on housing and community development programs expressing his strong opposition to the administration's stance to authorize controlled business and kickbacks. Chairman Gonzalez stated, *"It is astonishing that the administration responds to a disaster in the housing market by saying 'let them have kickbacks' which is not unlike royal sentiments like 'let them eat cake.' A new program of kickbacks won't do any thing for housing."*

On May 18, HUD issued a notice withdrawing the RESPA Section 8 Controlled Business Interpretative Rule in which HUD had stated that controlled business may be a violation of Section 8.

Subsequently the Housing Subcommittee rejected the administration's position and approved legislation that when a real estate professional with an ownership interest in a title insurance agency refers business to that agency, the agency was required to obtain 80% of its business on the basis of the competitive merits of its product, service, and rate.

In 1982 a National Association of Insurance Commissioners' (NAIC) task force was considering a Model Title Insurance Act. The task force had an advisory committee made up of title insurers and agents, ALTA, the American Bar Association, and bar-related title insurance companies. The advisory committee recommended that the Model Act (1) prohibit a title insurer or title agent from obtaining more than 20% of its gross business from controlled business, (2) require a company in business to reach the 20% limitation in fours years, and (3) exempt attorney agents and transactions in a county less than an unspecified population from any controlled business.

On October 6 the ALTA Board of Governors approved a resolution on controlled business, which provided in part as follows:

NOW THERFORE, be it resolved that the Board of Governors of the American Land Title Association hereby (1) confirms that it is the association's highest priority to take all appropriate steps within its power to preserve and promote fair competition for title insurance services and, in the furtherance of that goal, to take, on the most expeditious basis practicable, appropriate steps to eliminate the anti-competitive and anti-consumer effects resulting from the payment of kickbacks and referral fees and other types of controlled business arrangements that the association is seeking to have prohibited by appropriate federal and state legislative or regulatory action, (2) directs the president of the association to appoint immediately a Special Committee on Controlled Business to explore, on an urgent basis, what appropriate further steps can be taken to advance the association's objectives in this regard, which special committee shall advise the association's Executive Committee as soon as possible of its recommendations, and (3) directs that the president take appropriate steps to ensure that the association's views on the adverse competitive impact of allowing producers of title business to become so-called soliciting agents be promptly communicated to the Pennsylvania Insurance Department.

In December 1982 the NAIC adopted a Model Title Insurance Act. It included a provision, lobbied for by ALTA, limiting controlled business of underwriters and agents to 20% of gross revenue in any calendar year.

The ALTA Special Committee on Controlled Business met for the first time on January 6, 1983. The committee recommended that (a) ALTA intensify its effort of dealing with controlled business at the federal level and at the state level in liaison with affiliated title associations and (b) a committee of seven underwriter CEOs and seven title insurance agents be formed to develop an ALTA Model Title Insurance Act by amending the NAIC Title Insurance Act and present a proposed act to ALTA members at the 1983 Mid-Winter Conference.

A committee of title insurance underwriters and title insurance abstracters and agents, chaired by ALTA President-Elect Donald P. Kennedy, president, First American Title Insurance Company, was appointed.

ALTA Vice President of Government Relations, Mark E. Winter, right, is greeted by Congressman Richard Shelby (D-AL) to discuss the financial institutions deregulations issue.

The committee submitted its Model Act to the ALTA Board of Governors, which approved it on March 17, 1983. The ALTA act amended the controlled business section of the NAIC Act by providing an attorney exception and a competitor's right of action.

Chairman Kennedy reported that ALTA members should use the Model Act as a framework, and they should be aware that on a number of points it did not represent a unanimous view within the title industry.

In March 1983 ALTA President Thomas McDonald lobbied in favor of a federal bill containing a provision that a title company affiliated with real estate professionals through an ownership interest obtain at least 80% of its business from sources other than from referrals by those parties.

In April 1983, the House Housing and Community Development Committee rejected the ALTA-backed limitation on controlled business by a vote of 21 to 10. Thereafter the committee voted to exempt controlled business arrangements from the antikickback provisions of Section 8 of RESPA provided that, among other provisions, the consumer was informed at the time of referral of the existence of the controlled business arrangement and the consumer was not required to use any particular provider of settlement services. In addition, the committee voted to permit states to impose more stringent limitations on controlled business. This legislation was adopted by the House as part of a housing bill.

As a result of this action by the House, title industry efforts to obtain a percentage limitation on controlled business were directed toward state legislators and regulators.

In July 1983 a meeting was held of representatives of affiliated associations and ALTA members for the purpose of ascertaining the status of the controlled business problem in the various states and to obtain their views on ALTA assistance in those states. Participants were informed that ALTA was ready to assist them in their pursuit of state legislation or regulations that addressed this problem.

On November 30, 1983, President Reagan signed into law amendments to RESPA Section 8 concerning controlled business. The changes provided that controlled business arrangements were exempt from Section 8 if:

- at or prior to the referral, a good faith effort was made to disclose the controlled business arrangement to the consumer whose business is referred and that consumer was provided a written estimate of the charges generally made by the settlement service provider to which the business is referred;
- the consumer is not required to use any particular settlement provider; and,
- the only thing of value that is received from the arrangement is the return on the ownership interest

involved in the controlled business arrangement.

Banks Want to Enter Title Business

In 1982 the Federal Home Loan Bank Board (FHLBB) issued proposed regulations on service corporations that, in part, would enable federally chartered savings and loan service corporations to operate as title insurance underwriters. At the time, service corporations were permitted by the FHLBB to have an ownership interest in title insurance agencies.

In a 32-page document ALTA urged the FHLBB to delete title insurance from its list of underwriting insurance activities of its proposed regulations for service corporations. ALTA also urged the FHLBB to reconsider permitting service corporations to act as title agents.

On October 15, President Reagan signed the Depository Institutions Act into law. This act contained a number of provisions of importance to the land title industry. One restricted bank holding companies from engaging in the business of insurance *"as a principal, agent or broker."*

Later that month the FHLBB officially withdrew a proposed regulation that would have permitted service corporations to engage in title insurance underwriting. The FHLBB stated that it was following the mandate of Congress as stated in the Conference Report accompanying the Depository Institutions Act. This withdrawal was due, in part, to the vigorous lobbying by ALTA.

On March 4, 1983, a law was signed in South Dakota permitting state-chartered banks in South Dakota to own insurance companies. It allowed an out-of-state bank holding company to acquire or charter a state bank, which in turn could own an insurance company. This law was inconsistent with Title VI of the Depository Institutions Act that limited bank holding companies from participating in the business of insurance. It was referred to as the "South Dakota loophole." The question of federal preemption arose, namely did state law take precedence over a federal statue that prohibited banks from engaging in insurance activities?

In a Senate Banking Committee hearing on bank holding company activities, Senator Chic Hecht (R-NV) expressed his concern with self-dealings and conflict of interest when a bank *"has an ownership interest in a title company."* Federal Reserve Chairman Paul Volcker responded by stating that the business of insurance should be supervised through the auspices of the Federal Reserve Board. Treasury Secretary Donald Regan, speaking on behalf of the administration, stated that banks should be permitted to provide insurance and other services through holding companies.

At the request of the Federal Reserve Board, Senate Banking Committee Chairman Jake Garn (R-UT) introduced S. 1532. It would place a temporary moratorium, until December 31, 1983, on acquisitions of thrifts and banks by nonbanks (such as finance, mortgage, and insurance companies and investment banks) and would stop the expansion of certain nonbank powers, such as bank holding companies entering into the business of insurance, authorized under state law.

A companion House bill, H.R. 3413, introduced by Charles Schumer (D-NY), placed a December 31, 1984, moratorium on such activities.

The Reagan Administration proposed legislation that specifically authorized banks and savings and loan holding companies to be able to engage in the insurance business as an underwriter, broker, or agent.

ALTA President Donald P. Kennedy presented testimony before the Senate Committee on Banking, Housing and Urban Affairs concerning financial institutions deregulation.

ALTA, in a letter to President Reagan, Treasury Secretary Regan, and Federal Reserve Board Chairman Volcker, voiced the title industry's adamant opposition to the financial services deregulation scheme. ALTA stated that any such deregulation package must not *"brush aside the problems of conflict of interest, credit tie-ins, and excessive concentration of economic and financial resources."*

As a result of ALTA's lobbying efforts ALTA met with Treasury Department officials on August 16, 1983, at their request. The ALTA representatives urged the administration to support the federal moratorium legislation to give Congress an opportunity to examine the complex questions involved in structuring the financial marketplace of the '80s and to develop sound public policy to accommodate the consumer's best interests. The Treasury officials reiterated the administration's commitment to deregulate the financial marketplace.

ALTA took its lobbying efforts to Capitol Hill. In a letter to Senator Heinz (R-PA), a principal sponsor of the federal moratorium approach, ALTA stated that several large bank holding companies had "thumbed their noses" at congressional banking policies and had circumvented federal banking law by means of lobbying several state legislatures, in particular South Dakota, to enact legislation that enabled state-chartered banks to engage in insurance activities that were barred to bank holding companies.

While a number of initiatives were introduced in 98th Congress on this issue, there was no congressional action taken before the end of the first session.

In March 1984 hearings were held by the Senate Committee on Banking, Housing and Urban Affairs on the deregulation of financial institutions. ALTA President Donald P. Kennedy said that ALTA supported the continued separation of the banking and insurance industries. He urged the committee to go beyond the *"present-day limitations on bank holding companies' insurance activities and prohibit banks and other lending institutions from establishing affiliated title insurance entities that will issue policies on their own mortgage loans."*

On October 12, 1984, the 98th Congress adjourned without completing deliberations on financial services deregulation legislation.

In early 1985, ALTA President Jack Rattikin, Jr., president, Rattikin Title Insurance Company, Fort Worth, TX, submitted extensive comments to the Federal Deposit Insurance Corporation on a proposed rule that would enable FDIC member banks, an affiliate, or a "bona fide subsidiary" to engage in insurance and real estate types of activities provided that certain restrictions were adhered to. He stated that ALTA was unalterably opposed to the proposal and that banks, through their affiliates or bona fide subsidiaries, should not be permitted to offer title insurance services.

Over 300 ALTA members wrote to President Reagan expressing their outrage at his controlled business position.

On July 12, 1985, ALTA Government Affairs Committee Chairman, C. J. McConville, president, Minnesota Title Insurance Company, Minneapolis, MN, testified before the FDIC. He focused on the conflict of interest implications when a bank is granted power to offer title insurance.

In a surprising turn of events, Treasury Secretary James Baker, in his testimony before the Senate Banking Committee, stated that the administration was "not pushing Congress" to approve expanded insurance and real estate powers for bank holding companies. He indicated that the administration would rather "switch than fight" on the expanded powers issue.

On August 1, 1985, the Federal Reserve Board denied the application of Citigroup, a bank holding company, to buy a South Dakota state-chartered bank. The purpose of the proposed acquisition was to enable Citigroup to engage in various insurance activities through the state-chartered bank.

In testifying before the House Banking Subcommittee on Financial Institutions Supervision, Regulation and Insurance, ALTA President Jack Rattikin, Jr., stated that the land title industry supported legislation that would close the so-called "South Dakota loophole," thus making it clear that bank holding companies could not engage in the business of bank and insurance activities.

In the fall of 1986 the Office of the Comptroller of the Currency (OCC) ruled that a national bank may act as an agent in the sale of title insurance because it was related to *"its express authority to make loans secured by real property."* This was a precedent-setting ruling from the OCC. It posed major concerns for the title industry.

In late 1986 the OCC issued an Interpretive Letter on title insurance that would allow national banks to act as agents in the sale of title insurance in any community, regardless of population, if such activities were undertaken in transactions involving the bank's loans.

The ALTA Government Affairs Committee recommended to the ALTA Board of Governors that every effort be expended to convince the OCC that the Interpretive Letter was an error from a legal banking policy and consumer perspective. The Board agreed and approved considering a lawsuit against the OCC if persuasion became unlikely of success.

In early November 1986, the Federal Reserve Board adopted a comprehensive revision to provisions of Regulation Y that dealt with permissible insurance activities for bank holding companies. A key provision granted bank holding companies or their subsidiaries the right to act as insurance agents if the holding companies or subsidiaries were headquartered in towns under 5,000 in population. The insurance industry wanted the right restricted to bank holding companies only (not their subsidiaries) with corporate headquarters in towns of less than 5,000. ALTA's policy was to object to any bank-related expansion into the business of insurance.

In 1988 ALTA continued to support federal legislation that would end bank insurance activities.

On February 6, 1987, the OCC issued a ruling that included expanding the authority of national banks to underwrite title insurance in addition to engaging in agency operations.

A special meeting of the ALTA Board of Governors was held on April 21, 1987, to consider this development. The Board agreed to bring a lawsuit against the OCC as soon as possible but only after a meeting was arranged, if possible, with the OCC that would seek to set aside the objectionable rulings. In addition ALTA staff was directed to determine if legislation could be obtained to reverse the rulings and to initiate a grassroots effort in support of such legislation among the ALTA membership.

On May 8, ALTA representatives met with the chief counsel of the OCC and members of his staff. But it was a frustrating meeting. All the policy and factual objections raised by ALTA were rejected as not critical to the underlying legal determination as to whether title insurance was an incidental banking power. As a result, the ALTA Board of Governors met to discuss litigation, with the Texas Land Title Association as a possible coplaintiff.

In July 1987, ALTA and the Texas Land Title Association jointly filed a lawsuit in the U.S. District Court in Austin, TX, to invalidate rulings of the OCC that permitted national banks or their operating subsidiaries to act as title insurance agents and underwriters. ALTA contended that the OCC Interpretative Letters written in July 1986 and February 1987 exceeded statutory authority laid down by Congress.

In commenting on the lawsuit, ALTA President John R. Cathey, president, The Bryan County Abstract Co., Durant, OK, said:

"The OCC did not even consider that there would be significant conflict of interest problems created if banks were allowed to act as title insurance agents in their own mortgage loan transactions, and we could have brought these problems to the attention of the OCC if they had published their proposed ruling for public comment. Moreover, the OCC rulings are wrong as a matter of law and fly in the face of Congress' 1982 legislative determination that insurance is not 'closely related to banking'."

In September, William T. Finley, Jr., counsel for ALTA and TLTA in the OCC litigation, informed OCC and HUD that national banks, with OCC approval, have been engaging in an activity that violated the Real Estate Procedures Act (RESPA). By letter dated October 20, 1987, HUD informed the OCC that it violated the antikickback section of RESPA by allowing national banks to lease office space to title insurance agencies where the rent paid by the agency was based on the volume of title business referred to it by the bank. The OCC responded that it would *"give careful consideration to the advisability of providing information to national banks on this matter."*

In 1988 ALTA continued to support federal legislation that would end bank insurance activities.

Of concern was that ALTA learned, through a Freedom of Information Act request, that Citibank had filed an application with the OCC to establish a subsidiary to issue title insurance policies.

In March 1988 the Senate approved a banking bill that was a significant lobbying victory for the title industry. It contained an exception for any national bank "lawfully engaged" in title insurance activities as of March 2, 1988, so long as the activities were limited to the state in which the bank was located and the bank was not acquired after that date by an out-of-state bank holding company. ALTA believed that such restrictive language had a significant effect on it's lawsuit against the OCC and had postponed the OCC's approval of the Citibank application to enter the title industry.

On August 4, 1988, the House Banking Committee approved a bill that placed tighter restrictions on banking expansion into insurance. Unfortunately Congress adjourned without acting on this legislation.

In December 1988 ALTA's Board of Governors agreed that the application by Citibank to establish a national title insurance underwriter must be opposed and that the Finley law firm should develop a litigation strategy in case the OCC was permitted by the courts to approve the application.

At the same time, the Board of Governors agreed that the Finley firm should prepare comments for ALTA in response to the Federal Reserve Board's notice of its proposed rescinding of its regulations dealing with state regulation of state-chartered bank subsidiaries. By such action the Federal Reserve Board would reassert its regulatory authority over state-bank subsidiaries.

On December 13, 1988, ALTA filed a complaint in the U. S. Court of Appeals for the District of Columbia against the Federal Reserve Board in connection with its order approving First Wisconsin's acquisition of a title insurance agent in Milwaukee.

There will be more on this issue in the next issue of *Title News*.

ALTA President Marvin Bowling, second from right, congratulates ALTA's Errors and Omissions Committee Chairman Earl Harper, at his immediate right. Also shown from left, ALTA Director of Research, Rich McCarthy, Immediate Past President John Cathey, and Executive Vice President Mike Goodin, who were TIAC vice president and treasurer, president and vice president, and secretary respectively.

ALTA Education Expands

Educating members has always been a part of the services offered by ALTA. It was done through articles in *Title News*, at conventions, and at seminars.

Education took a giant step forward when on September 1, 1980, Hart McKillop of Winter Haven, FL, an ALTA Honorary Member, gave all of his stock in the Land Title Institute to The Land Title Institute, Inc., a nonprofit corporation organized by ALTA in the District of Columbia. He had created the Institute in 1970 to provide educational correspondence courses for title company employees nationwide. Hart McKillop had 50 years of experience in most of the aspects of the title industry. He had been director of continuing education for Lawyers Title Insurance Corporation. The ALTA Board of Governors, by resolution sent to Hart, expressed its appreciation of his gift. The Institute continued to be run from Winter Haven until 1989 when it was relocated to ALTA headquarters in Washington, D.C.

The Land Title Institute is now an educational subsidiary of the American Land Title Association. It has evolved into an organization that offers comprehensive title industry training through various mediums.

An E&O Insurance Company is Formed

Abstracters and title agents across the country had been troubled for some time prior to 1988 by recurring errors and omissions insurance problems brought about by abrupt market changes. Dramatic swings in prices and availability led the American Land Title Association to look for a better alternative that would bring long-term stability for title professionals seeking E&O coverage.

After considering several different approaches, ALTA leaders decided that the most effective solution would be to create the Title Industry Assurance Company, TIAC, an independent risk-retention group wholly-owned by members of the association to be chartered in Vermont. TIAC issued its first policy in June of 1988 and has been continuing to insure more and more title professionals since that time.

Since title professionals own and govern TIAC, TIAC has the knowledge and expertise to customize coverage for the special needs of its insureds. Managed by insurance professionals, TIAC has provided a stable and competitive market since 1988.

The Next Decade: 1989-1998

Look for the article on the next decade in our history in the September/October issue of *Title News*. If you missed a decade during the year, you can find all the history on ALTA's Web site under the special 100th Anniversary Section.

William J. McAuliffe, Jr. was executive vice president of ALTA from 1965-1984. He is serving as historian and adviser to ALTA during the 100th anniversary celebration. He can be reached at billm@alta.org.

BY MICHAEL P. KRONE

Diversity Marketing & Cultural Awareness

Diversity today means something very different than it did years ago. Learn ways to increase your customer base and grow your business by hiring diverse staff and marketing to diverse customers.

Cultural awareness is more important today for a title company to be successful. Today's builders, lenders, real estate agents, brokers, and consumers represent the American melting pot, and specific strategies to work with different cultures can help you succeed. You need to ask yourself: Does my customer base look different today versus five or ten years ago? Does my business resemble the community I serve? Does it resemble my customers? If the answer to any of these questions is "no," then you need to evaluate the way you market and operate your business. If your customers are different than you and they feel unrecognized, you will begin to lose them. Your customers will go where they are valued, understood, and well served. They will not stay where they are made to feel different or uncomfortable. You may have noticed in recent years that stores like Home Depot have welcome signs in foreign languages. This isn't because they believe their clientele cannot understand English. Instead, it's to make them feel welcome in their own language. Diverse or heterogeneous organizations do a better job at marketing and selling to diverse or heterogeneous target markets.

You know you have an excellent portfolio of products and services, but for whom? It is not your product or service that will make you successful for the long term. Diversity in the workplace used to be based upon the color of skin and ethnicity. These days, diversity in the workplace has become much more than that. Most CEOs and executives alike have come to discover that diversity is what often makes for better business. Every one of us comes from a different background with different experiences that led to different results. Each one of us brings something different to the table whether it is age, ethnicity, religious beliefs, national origin, or race. It's in this diversity that we flourish as a company. A diverse workforce is not only good for the company but good for the company's market. The company that is capable of managing a diverse population of employees most often attracts a diverse range of customers. It doesn't take a strategic planner to know that the more diverse a company's customer base is, the better it prospers in popularity and sales.

Diversity is No Longer Just Black and White

Diversity today means something very different than it did years ago. Today's diverse homebuyers include not only African Americans but also Asian Americans, Pacific Islanders, Hispanics, and Caribbean, African, and South American natives. They include multiple age groups such as Generation Xers, Baby Boomers and retirees. Today's buyers are just as likely to be single females, single parents, and from the gay and lesbian community as the married couple with children.

The minority homeownership rate is roughly 47%. Over the past 12 years, minorities accounted for 35% of the first-time home purchasers. Immigrants accounted for 33% of household growth. Latinos are the largest growing household market segment – 15% of the U.S. population. Over 47% of African Americans, some 5.7 million people, own homes. Sixty percent of Asian households are owner-occupied. By 2010, 28% of American households (31 million) will be headed by females. Baby Boomers are a unique homebuying segment. Just when you thought they were retiring to over-55 retirement communities, they fuel sales of second homes and vacation homes. Sales to this group are expected to stay strong for years because the youngest baby boomers are only 42 to 43 years young!

Immigrants and people of different ethnicities, religions, backgrounds, and nationalities often flock to those businesses that are owned and operated by individuals of like-kind. They feel comfortable dealing with people that understand their culture. It is no easy task to obtain business from such groups if you are not a member of their community, but it is not impossible. You must first understand the background and lifestyle of the group you are marketing to. Simply understanding and liking an ethnic group's food is not enough to convince them that you understand their needs. Yet this doesn't mean you have to hire a member of that community in order to obtain business from that community, although it does help. It does mean that you need to spend time understanding their culture, language, wants, needs, and fears. How you do this depends primarily on whom you are marketing to and how much you wish to invest in tailoring your business to meet their needs. Meet with members of the community you wish to serve, ask them how you can best serve their community, and what, if anything, is missing from the services they are currently receiving. Listen, learn, and act.

If your customers are different than you and they feel unrecognized, you will begin to lose them.

Adapt your product or service to meet the needs of your new customers. Be proactive and anticipate your customers' needs. Make sure this market is "high growth," "emerging" or "up and coming." Promote your products and services and monitor results. Try marketing to these audiences by starting a pilot program before devoting substantial resources. Devoting substantial resources to a small market with little growth potential is never a good idea.

Be the first to reach out to these markets and you will realize a significant competitive advantage (the first to market rules—leaders dominate, followers pick up the scraps). You may ask yourself—what comes first—the market or the service? The answer is always the market. Never try to adapt the market to your services. Your services must always adapt to the market.

Diversity Marketing Strategy Relys on the Four P's

- Product - you must have a product or service that the diverse group wants or needs.
- Price - your products and services must be made available at a price your market is willing to pay.
- Place – You must be convenient to your customer base.
- Promotion - Potential customers must know that you and your service exist.

Communication is the most essential element of your marketing efforts. Status quo is ineffective—remember if your marketing and advertising strategies have not changed in years, you are already losing customers to your competition who are capitalizing on demographic changes.

Different racial, ethnic, and social communities have their own unique sources of information. Identify them and then build a marketing plan that utilizes these resources to get your message out. Look for resources such as ethnic and social community newspapers, yellow pages, newsletters and the like, which are tailored to these individual communities.

It's always an advantage to speak the language of a nationality that you wish to serve. You can't always find employees who speak a second language. If you do not already have bi-lingual staff, offer bonuses and other incentives for them to take classes or programs to learn a second language. By doing this you retain a valued and experienced staff and have the ability to broaden your marketing. There is no question that customers for whom English is a second language appreciate being spoken to in the language they are most comfortable with.

Marketing by Age Group

The three prominent age groups in America today are the Baby Boomers—those born from 1946 to 1964; Generation Xers—those born from 1965 to 1981; and the Millenials—those born from 1981 to the present. There is as much diversity between these age groups as there is between different cultures. This means that you need to diversify your marketing approach to each age group as you would to the other groups discussed here.

The largest group of buyers today are Generation Xers, and they are the most diverse generation to date.

The largest group of homebuyers amongst these three are the Generation Xers. They lead very fast paced lives. Demographically, they are the most diverse generation to date: 69% are Caucasian, 13% African American, 13% Hispanic, 3% Asian American and 1% Native American. They like to hear "We'll do it your way;" "We're pretty flexible;" "We don't have a corporate mindset – we take more of a hands-on approach."

Diversity is the key fact of life for Gen Xers, the core of the perspective that they bring to the marketplace. They have a sophistication about advertising from a lifetime spent watching and reading more of it than any generation. They are skeptical and irreverent, ready to buy but smart about marketing. They refuse to let their lives be stripped down to the stereotype of a marketing target group. Therefore, your marketing approach cannot have that appearance.

To market to this group, you must use multimedia and abandon the hard sell. They want to be treated with more intelligence and respect than they usually see in ads, and they want an honest approach. With them it is best to get to the point and stick to the point. Don't drown your message in warm and fuzzy or unrealistic promises. They like attitude, so get some. To them, attitude, not brand, makes the sale. Be bold in your statements – "We will make the transaction happen." Stay away from traditional taglines like "We are the best." Most importantly, have some fun. Generation Xers are young people, full of energy and ready for fun. Your marketing approach and ideas should reflect this. ESPN caters to this group and puts out some of the funniest and best commercials in the industry. The title industry can be pretty stuffy, but your marketing approach doesn't need to be. Get advice on marketing to this group from other Generation Xers.

The most effective way to reach Generation Xers is with visual images. They have been inundated with visual marketing, and they are comfortable with it. Their attitudes and values are shaped by visual images rather than the written word, so form your marketing materials around pictures with fewer words. They are the least likely generation to read a newspaper. They prefer communication by e-mail, Internet, through multimedia, social events, and peer-to-peer gatherings.

Getting Started

Get out into the community. Expand partnerships with nonprofit and community-based organizations that strive to increase homeownership for all. Support housing initiatives that benefit lower-income, first-time buyer, immigrant and minority groups, and unique cultures. Participate in home-buying fairs, seminars, workshops, and various outreach initiatives to advocate that homeownership is achievable. Offer information, tools, and educational resources that assist your customers and their clients in achieving financial literacy about the home-purchasing process. By doing this you become a part of the ethnic, racial, or social community you wish to serve. Business is slow, and in such markets we tend to mine the same spaces. It's time to go beyond our comfort level and delve into whole new arenas of prospective customers.

Michael P. Krone is vice president and special counsel, director of sales, Massachusetts for First American Title Insurance Company in Boston. This article is an excerpt from a presentation he made during ALTA's 2006 Annual Convention. Mike can be reached at mpkrone@firstam.com.

BY JAMES P. SIBLEY

A Well-Intended Law Goes Bad

Earlier this year the title industry in Texas faced a shutdown based on a well-intended law with terrible consequences. Learn how this obscure law brought Texas' title insurance industry to its knees and what it did to fix the blunder.

Texas is well-known for its mesquite-smoked barbeque, towering oil derricks, monster pickup trucks, and the Dallas Cowboys. What the Lone Star State is less well-known for is yellow "crime-scene tape" roping off its county courthouses. Yet, earlier this year, that's exactly what happened when Texas Attorney General Greg Abbott issued his infamous opinion (GA-0519), declaring that a county clerk commits a crime, punishable by up to six months in jail, when he or she discloses a social security number to the public. Like dominoes falling, the state title insurance industry began to make preparations to shut down. Without access to the county clerk's real property records, Texas' title plants could not be maintained, thereby widening the "gap" risk to an uninsurable level. Fortunately this story has a happy ending; but how did Texas get in such a fix in the first place, and what can the title industry learn from the Texas debacle?

"Open" Open Records Laws

Following the Sharpstown scandal of the early 1970s (a legendary exposé involving a bank, bribes, and the speaker of the Texas House of Representatives), Texas enacted what are considered to be among the most progressive, if not the most progressive, open records laws in the nation. The preamble to these laws (now known as the Texas Public Information Act or PIA for short) reads:

> *Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.*

However, the PIA continues to be tweaked every time the Texas legislature is in session (it meets for 140 days every 2 years; some curmudgeons suggest that it would be better if the legislature met for 2 days every 140 years), and such amendment attempts often provoke fierce battles between the people who advocate for open government records and those who feel that their privacy is invaded by too much openness. During the legislature's session in 2005, Senate bill 1485 (S.B. 1485), a bill adding 60 words to the PIA, started the ball rolling on a calamitous course.

Senate Bill 1485

S.B. 1485 on its surface appeared to be a good compromise between the advocates of more openness versus those who feel that such openness makes their personal information too public. S.B. 1485 amended the PIA by saying, in essence:

- Social security numbers of a living person, contained in a public record, do not have to be disclosed to the public; and,
- A governmental body *may* redact the social security number of a living person, from any information disclosed to the public, without obtaining the attorney general's approval to do so.

S.B. 1485 sailed through the legislature without opposition, was signed by the governor June 17, 2005, and became effective immediately. The bill passed without opposition simply because it was interpreted to *permit* redaction but not *require* it. However, shortly after its enactment people began to question this interpretation [including this author, who had asked the governor to veto the bill], and county clerks asked such mechanical questions as "How do I know if the person is still living?" or "Can I still certify a document as a true and correct copy of the original if I've redacted the social security number?"

The Fort Bend County Clerk

To the southwest of Houston lies Fort Bend County, a bedroom community built on the remnants of old rice fields, which is annually ranked among the country's fastest growing counties. Its county clerk, Dr. Dianne Wilson, is well-known as an open records proponent and has demonstrated her beliefs time and time again since taking office in 1983. A proactive individual, Dr. Wilson asked her county attorney to request an attorney general's opinion in order to clarify what actions she should take as county clerk to comply with S.B. 1485. By his November 18, 2005, letter then Fort Bend County Attorney Bud Childers did just that: he asked General Abbott, among other things, if Section 552.147 of the Texas Government Code (the 60 words added to the PIA by S.B. 1485) was permissive or mandatory. In other words, was the county clerk required to redact social security numbers before making documents (containing SSNs) available to the public, or was redaction optional?

While the months marched on without an opinion, most interested parties and observers were not overly worried, as surely General Abbott would have to opine that redaction is optional, for wasn't that what the word "may" meant?

Attorney General Opinion

More than 15 months after it was requested, General Abbott faxed his 13-page opinion (GA-0519) to the Fort Bend county attorney on Wednesday, February 21, 2007, saying in part:

> *"It is universally agreed that SSNs are at the heart of identity theft and fraud, and in today's Internet world where information, including public government information, can be instantly and anonymously obtained by anyone with access to the World Wide Web, the danger is even greater."*

General Abbott went on to rule, to the utter astonishment and dismay of perhaps everyone other than General Abbott and his staff, that not only was redaction of social security numbers mandatory before disclosing a document to the public, but a county clerk would be committing a *crime* if he or she failed to do so, subjecting the county clerk to up to six months confinement in the county jail.

Bad news travels fast. By Monday, February 26, 2007, county Web sites had gone dark, virtually all of Texas' 254 county clerks had stopped providing copies of real property documents to title companies and title plant maintainers, and nearly all county clerks had closed their doors to the public (the yellow crime-scene tape). While people could still file documents, no one could obtain a copy of what had been filed, nor could a citizen access records in the county clerk's office; county clerks had been advised by their county attorneys to shut down access to public records or face going to jail. Now, Texas' county clerks are a group of dedicated and hardworking elected officials, but sleeping in the county jail is not what they had in mind when they ran for office.

The Reaction

To say that GA-0519 sent shock waves throughout Texas, and in many other parts of the country as well, is an understatement. The title industry was numb. Landmen were apoplectic. Overnight, portions of Texas' economy began to shut down. Not only was the title insurance industry out in the cold, but the oil and gas industry, a very important contributor to Texas' growth during this era of $60 a barrel oil, wanted to know how they would be able to hunt for oil if they could not lease the rights to do so. County clerks

wondered where all the money would come from to mask or remove social security numbers from the innumerable pages of recorded documents, many of which still exist only in paper volumes or microfilm rolls.

A massive outcry was heard all the way to General Abbott's office in Austin, and exactly one week after he issued his ill-fated opinion, he agreed that "the real-world consequences [of his opinion] was a virtual halt to a tremendous amount of business and commerce in Texas," and he abated GA-0519 for 60 days "to allow the legislature ample time for thorough deliberation and action."

The Texas Legislature lost no time – House bill 2061 (H.B. 2061), which in essence negates GA-0519, was filed February 27, 2007:

"Notwithstanding any other law, a county or district clerk may disclose in the ordinary course of business a social security number that is contained in information held by the clerk's office, and that disclosure is not official misconduct and does not subject the clerk to civil or criminal liability of any kind under the law of this state."

H.B. 2061 passed both houses unanimously, and was signed into law by the governor March 28, 2007, the second bill to be enacted into law during the 2006 biennial legislative session. It became effective immediately. Everyone breathed a huge sigh of relief.

> "We must hang together, or assuredly we shall all hang separately."

Lessons Learned

While Monday morning quarterbacks might claim that they could have foreseen the train wreck coming, it's difficult to second guess the many people who read S.B. 1485 and concluded that there was "no harm, no foul" due to its supposed permissive nature. Leaders in the Lone Star State are not sure what they could have done differently. What is certain is the overwhelming cooperative effort which emerged following GA-0519. A meltdown of Texas' title insurance industry was only avoided because so many individuals, spread across disparate industries, acted quickly and loudly in making the Texas legislature aware of the disastrous effect S.B. 1485 and GA-0519 were having on the Texas economy. Former Texas Land Title Association President Bruce Boyer said, immediately after passage of H.B. 2061, "Our recent grassroots efforts to secure passage of H.B. 2061 is a great example of how TLTA is on the scene when legislation critical to the industry is being considered. Our legislative team was front and center at the Capitol during February and March, as we pushed for passage of H.B. 2061 to solve the county clerk problem."

As you encounter laws in your state which come with unintended consequences ("We didn't mean that!"), the best advice from the Texas debacle may be to join forces and to act fast, furiously, and formidably. As Benjamin Franklin declared over 200 years ago, "We must hang together, or assuredly we shall all hang separately."

James P. "Jay" Sibley is president and CEO of Title Data, Inc. in Houston. He is chair of ALTA's Improvement of Land Title Records Committee. He can be reached at: 713-880-2600, x.312 or jsibley@titledata.com.

Stewart is proud to present Home Abstract and Title Company of Waco, TX in the Stewart Technology Innovator Spotlight series featuring leaders who use technology to enhance the real estate transaction. For more than 25 years, Home Abstract and Title Company has used Stewart technologies to provide their title agents with a better way to do business and offer exceptional customer service to their home buyers and sellers.

David Busch
Chief Operations Officer
Home Abstract and Title Co.
Waco, TX

Front Row: Will Fair, Shirley Schavey and Cindy Schrader
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- David Busch

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Member News

ARIZONA

Stephen P. Veltri has been appointed senior vice president and chief operating officer of the National Settlement Services Division of First American Title Insurance Company, Phoenix.

CALIFORNIA

First American Corporation, Santa Ana, has several announcements.

Jo Etta Bandy has been promoted to senior vice president, corporate communications. Bandy joined First American in 1998 and most recently was vice president, corporate communications.

Richard A. Kersenbrock has been named vice president and manager for Los Angeles County. A First American employee since 1998, most recently Kersenbrock was Southern California regional director for the company's National Homebuilder Services division.

Daniel T. Langston has been named president and **Lawrence F. Hariton** has been named chief operating officer for First American Home Buyers Protection Corporation. Langston served as senior vice president for 20 years before assuming the roles of executive vice president and chief operating officer in 2004. In February 2006 Hariton was named chief financial officer, a position he will continue to maintain in addition to chief operating officer.

CALIFORNIA CONT.

Michael A. Rasic has been named vice president, director of SEC reporting. Previously he was chief financial officer of Metrocities Mortgage in Sherman Oaks.

David L. Ruhm has been named chief actuary. Previously he was assistant vice president at The Hartford Financial Group, Hartford, CT.

Mark E. Seaton has been promoted to director of investor relations. Seaton joined First American in 2006, most recently serving as treasury associate.

Landon V. Taylor has been promoted to senior vice president, director of market development. Since joining First American in 1997, Taylor has held positions with a number of the company's subsidiaries. Most recently he was president and chief executive officer of First American VMS, a wholly owned subsidiary of the holding company.

Carl W. Brown has joined Old Republic National Title Insurance Company, Irvine, as president of the National Default Services Division. He has nearly 20 years of experience in default services, most recently with a major national underwriter.

MARYLAND

TSS Software Corporation, Annapolis, has two announcements.

Laura Davis has been promoted to director of accounting. She has over ten years of accounting experience and most recently was senior accountant.

Frank Roberts has been promoted to vice president, support operations. Roberts joined TSS in 2003 with over 20 years of IT experience. Previously he was the company's director of operations.

NORTH CAROLINA

David Hartman has joined Old Republic National Title Insurance Company, Greensboro, as the director of business development for the National Default Services Division of the National Services Group. Hartman has more than 15 years of experience in default services, most recently with a major national underwriter.

OHIO

Shawn Fox has been named national sales manager for InWare, Cleveland, a software services provider for the real estate services industry. Fox brings seven years of sales and marketing expertise within the IT and advertising industries.

PENNSYLVANIA

William Homa has been promoted to vice president and director of commercial sales and services for First American Title Insurance Company, Pittsburgh. He became an underwriter for First American in 2000, a position he held for three years before being promoted to his most recent post as senior commercial underwriter in 2003.

TEXAS

Stewart Title Guaranty Company, Houston, has several announcements.

James L. "Jim" Gosdin has been named chief underwriting counsel. A Stewart associate for almost 30 years, Gosdin is a senior vice president and has served as senior underwriting counsel and chief reinsurance counsel. **Jim Kletke**, former chief underwriting counsel, has relocated to serve as senior vice president, senior underwriting counsel and region H counsel.

Michael B. Skalka has been elected president. He will continue as chairman of Stewart's international group, where he has served since 2005.

Malcolm S. Morris has been elected chairman and chief executive officer. Stewart Morris, Jr., has been elected senior chairman.

Denise Hurst has joined RamQuest Software, Plano, as vice president, strategic initiatives. Hurst has 25 years of experience with high-tech and entrepreneurial ventures.

VIRGINIA

LandAmerica Financial Group, Richmond, has several announcements.

Michael D. Beverly has been appointed senior vice president – associate general counsel and corporate secretary for the International Operations Resources, Communications Resources and Investor Relations departments. He comes to LandAmerica from Chesapeake Corporation where he served as assistant secretary and associate general counsel.

Janice E. Carpi has been promoted to senior vice president – commercial services senior underwriter and transaction counsel. Carpi has been with LandAmerica since 1985, most recently serving as vice president and senior underwriting counsel.

Pam Saylors has been promoted to group senior vice president – national title operations for commercial services. Saylors has been with LandAmerica for 29 years, most recently as national senior vice president – commercial services.

David B. Zoffer has been named senior vice president – litigation counsel. Zoffer's legal career spans 35 years, and he comes to LandAmerica after serving as principal of the Zoffer Firm in Chapel Hill, NC since 2001.

KUDOS

Evans Title Agency Wins Award

The Evans Title Agency, Tipp City, OH, was awarded the Dayton and Miami Valley Better Business Bureau's Eclipse Integrity Award in the 1 to 20 employee category. Evans was one of 85 businesses nominated in that category. The Eclipse Award recognizes the outstanding performance of Miami Valley businesses and nonprofits. Details: Tim Evans, 937-669-3826 ext. 202.

Jay Hershman Voted Top Attorney

Jay N. Hershman of Baillie Hall & Hershman, P.C., Connecticut's largest supplier of real estate closing services to the employee relocation industry, was voted one of New Haven's top three attorneys in the New Haven Advocate 2007 Best of New Haven Reader's Poll. The annual poll asks readers to vote for vendors and professional services providers in categories ranging from painters to pastry shops. This year the poll drew over 50,000 paper and web ballots from readers. Details: Elisabeth Hershman, ehershman@vanprooyen.com.

SoftPro Named Stevie Award Winner

SoftPro was named a winner in the 5th Annual American Business Awards in the Best Support Team category. They were finalists in the Best Customer Service Team and Best Product Development Team categories.

The Stevie Awards, as they are referred to, are hailed as the business world's Oscars. More than 2,000 entries from companies of all sizes in every industry were submitted for consideration. Details: 1-800-848-0143.

member news

KUDOS Cont.

Underwriters Make Fortune 500/1000 List

Two national underwriters made the Fortune 500 list for 2007, and another three made the Fortune 1000 list. Fidelity National Financial ranked 264 and First American Corporation ranked 289 on the Fortune 500 list. LandAmerica Financial ranked 522, Old Republic International ranked 548, and Stewart Information Services ranked 750 on the Fortune 1000 list. Thirty-three (33) insurance companies were part of the Fortune 1000 list. Among the list of insurance companies, Fidelity ranked 12th, First American 13th, LandAmerica 20th, Old Republic 21st, and Stewart 28th.

In Memoriam

Donald Edwin Henley, loving husband, father, grandfather, and beloved friend, passed away suddenly Sunday morning, April 15, in his home in Woodland Hills, California.

Don was born in Pasadena, California, on April 13, 1923, and graduated from Pasadena Junior College in 1941. He served in the United States Navy from 1942 to 1945. He graduated from UCLA in 1950 with a B.A. in Psychology and attended Claremont Graduate School, majoring in Oriental Studies.

His professional career was shaped by his time in the Navy, when he was assigned to the naval computer facility in New Orleans as an IBM specialist. Continuing on that path while a student at UCLA, he worked as a senior programmer for the National Bureau of Standards (1947 to 1951). He went to work for The RAND Corporation in 1952, as a senior computer system analyst and worked on the development of the SAGE defense system. Don went with the System Development Corporation (SDC) when it spun off from The RAND Corporation in 1958, and worked there until 1968. He concluded his years there as a manager of Satellite System Integration and Operations, a position which placed him in charge of the "spy-in-the-sky" satellite tracking system for the United States Air Force, with tracking stations around the world.

In 1968 Don left SDC to co-found HW Systems, a company dedicated to automating title plants for the title insurance industry. In 1970 he became founder, director, and president of Informata, Inc., which pioneered the first use of minicomputers for title plant systems. When it was acquired by Title Data in 1982, Informata was the dominant supplier of minicomputer based title plant systems in the United States, having automated over 50 title plants in 14 states. After Informata was purchased by Title Data, Inc. in 1982, Don became a management and automation consultant, applying his vast knowledge and professional experience to the design, development, marketing, and support of state-of-the-art information management systems for the land title and escrow industries. He was known by those he served as "the grandfather of automation for the title insurance industry." He continued to work in the title industry up to April 15th.

People who knew and loved Don will remember him for his exuberant love of life, his whimsical nature, and his unwavering optimistic attitude, as well as his love of music and history, and his ongoing concern for the future of humankind. Don's contributions to the title industry will remain for many years to come.

Don is survived by Milania Austin Henley, his wife of 50 years, daughters Catherine Henley of Santa Maria, California, and Elizabeth Miller of Westlake Village, California, and his three beloved grandsons, Chris Ruys of San Francisco, and Shane and Jordan Miller of Westlake Village. Don will be missed by many.

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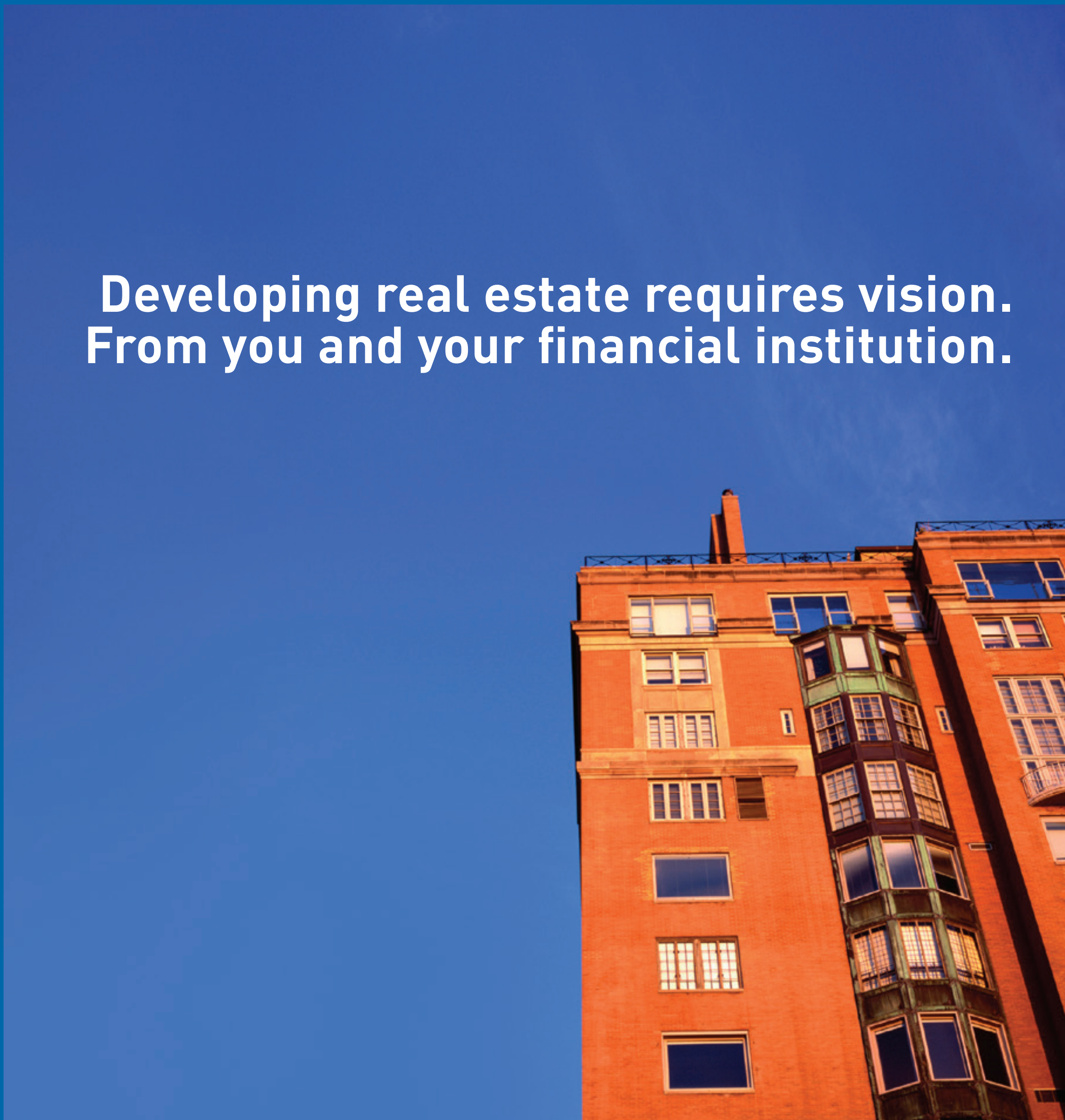
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