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American Land Title Association

# TitleNews



## Top Lawsuits Impacting the Title Industry

ALTA's Title Counsel breaks down  
several cases decided in 2009

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*October 13-16* | 2010 Annual  
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## STATE CONVENTIONS

*May 23 - 25* | California  
*June 2 - 6* | Arkansas  
*June 4 - 6* | Virginia  
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*June 9 - 12* | New Jersey  
*June 9 - 12* | Pennsylvania  
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*July 22 - 23* | Illinois  
*August 5 - 7* | Northwest  
(ID, MT, OR, UT, WA)  
*August 12 - 14* | Kansas  
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*September 16 - 18* | North Carolina  
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*November 3 - 5* | Florida  
*December 1 - 2* | Louisiana

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## Title Protection on Refi Transactions Must be Maintained

**R**efinance volume will always be a significant portion of total origination volume. And refi booms will always be part of the housing and mortgage cycle. But imagine if your company no longer issued title insurance policies for refinances. What would that do to your revenue? What would that mean to your employees? How would that affect the quality of the public records you search for purchase mortgage transactions? What would that mean to your claims?

The Uniform Law Commission (ULC) has appointed a study committee to consider whether a uniform or model act on mortgage subrogation should be created. Your attorneys could provide a better definition, but subrogation essentially means the refinancing lender would simply assume the lien position of the original lender. State laws on this vary, but some are wondering whether this could be an incentive for the title industry to substantially lower the costs of title insurance for refinances or even remove the need for the protection of a title insurance policy altogether.

The ULC's study group has already met by phone on two occasions, and has been well represented by the title industry. ALTA will be playing a greater role in the discussions about the challenges and opportunities of mortgage subrogation, and we'll be engaging ALTA committees for their feedback.

Our message on this issue is consistent with the positions we've taken in the past: the accuracy of our public records should be strengthened, not weakened. If we learned nothing else in the mortgage crisis, it's that we should advocate for stronger underwriting standards, not weaker ones. This is our opportunity to explain the value we provide to our communities.

In addition, mortgage lenders need to manage the risk of having to defend against claims to the mortgaged property. They do this by shifting the risk of defense costs to the title insurer. This reduces the risk of loss to the lender which reduces consumers' cost of borrowing.

The title industry has a high number of fixed costs to maintain the ability to identify risk and defend against claims. If revenue from issuing policies on refinanced mortgages were lowered in order to lower costs for refi consumers, the cost of insuring purchase mortgages would inevitably increase, leading to higher costs for homebuyers. This kind of cost shifting may be penny wise but dollar foolish, and would also diminish the accuracy of our public records.



A handwritten signature in black ink that reads "Kurt Pfothenhauer". The signature is written in a cursive style and is followed by a horizontal line.

– Kurt Pfothenhauer

## ALTA Urges HUD to Clarify Position on Private Transfer Fees

The American Land Title Association and the National Association of Realtors sent a letter March 23 to the Federal Housing Administration requesting that HUD clarify its position prohibiting the use of private transfer fees for FHA-insured mortgages and oppose private transfer fees for other mortgages as well.

Private transfer fees require consumers to pay thousands of dollars to third parties that hold no ownership interest in the property for the right to buy or sell real estate. These fees usually require a fee (typically 1 percent of the

sale price) be paid to a developer or their trustee each time a property is sold for a set period of time (usually 99 years.) Freehold Capital Partners is attempting to securitize the revenue streams to sell as investments, and their scheme is being promoted aggressively to state and federal authorities as well as to Wall Street.

ALTA's Board voted to oppose private transfer fees, noting they cost consumers money and will result in increased costs of underwriting, claims, escrow services and compliance.

## FHA Withdraws Approval of Two Lenders

The Federal Housing Administration (FHA) is permanently withdrawing its approval of Atlanta-based RSA Financial Inc. and 1st Alliance Mortgage LLC of Houston. The actions prevent the lenders from originating and underwriting new FHA-insured mortgages or from

participating in the FHA single-family insurance program. The U.S. Department of Housing and Urban Development's Mortgagee Review Board also voted to impose a \$15,000 civil penalty against RSA and seek \$267,900 from 1st Alliance.

## National Flood Insurance Program Reauthorized

The National Flood Insurance Program (NFIP) has been reauthorized, allowing the program to once again issue new policies or renewing policies to cover flood damage.

The bill (HR 4851) reauthorizing the NFIP was passed by Congress on April 15 and signed into law by President Obama the same day. It extends the NFIP through May 31. It is retroactive to March 28, when its last extension expired.

"This reauthorization will allow for policies to continue to be issued or renewed," said Brad Carroll, a spokesman for FEMA. "Individuals who were seeking to renew their policies or purchase a new policy during the period between March 28 and April 15 may now proceed with their purchase. Existing policies were not impacted by the lapse in Congressional authorization and continue uninterrupted."

The NFIP sunset could have caused short-term

problems for consumers waiting to close on the sale of a property within a special flood hazard area, according to the National Association of Insurance Commissioners.

When the NFIP's authority lapsed, several agencies, including Freddie Mac and Fannie Mae issued guidance.

Freddie Mac reported its policies on flood insurance remain unchanged, including:

- Seller/Service providers originating mortgages for sale to Freddie Mac must continue to perform flood zone determinations.
- Dwellings on mortgaged properties in Special Flood Hazard Areas, and mortgages delivered to us secured by such properties, must have flood insurance coverage.

Fannie Mae stated that it will purchase loans secured by properties located in those areas that do not have an active flood insurance policy as long as certain conditions are met.

# Standard Procedures and Controls Created by Internal Auditing Committee

The standard audit guidelines were created to help improve the title industry by imposing consistent and fair standards against which every company is measured.

Urged by ALTA's Board of Governors, the Internal Auditing Committee developed standard audit guidelines that should be implemented within each title agency to ensure the acquisition or transfer of property can be handled with a maximum degree of efficiency, security and safety.

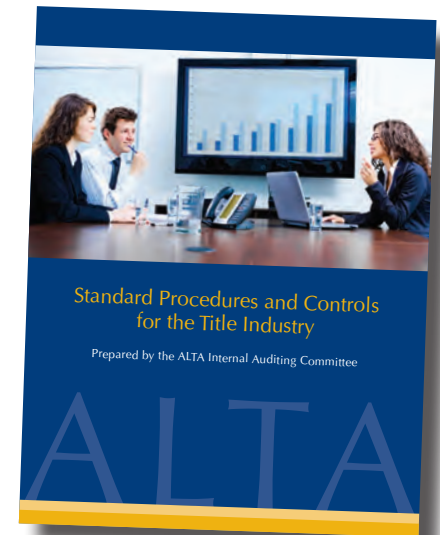
The committee, comprised of the senior auditor from a number of title insurers, created the Standard Procedures and Controls for the Title Industry, which was then approved by the Board.

Kevin Gauer, chairman of the Internal Auditing Committee, said the Board wanted the committee to develop standard agency audit guidelines that would be acceptable to all title underwriters and could be used to demonstrate that the title

industry is taking one more step to improve the industry.

"The committee felt that the focus for any initiative to improve controls and set standards should be on company operations and not only auditing," he said. "The committee wanted to promote a certain foundation of essential controls and procedures and stress that those controls need to be installed and maintained. The committee also wanted to avoid having audit report findings and recommendations be the only source of this information."

In 1991, ALTA published a standard Agency Audit Program that was intended to be a generic audit procedure allowing title insurance underwriters to build their own agency audit program. But over the years, there has been considerable variation among the insurers in the application of the agency audit



program for various reasons, not the least of which is the lack of common industry control standards for agencies, Gauer said.

What is treated as a significant deficiency by one insurer may be treated as a medium or low priority matter by another.

"Lacking written control standards, auditors are left to measure control adequacy judgmentally or against their company's expectations, which can vary widely among the insurers," Gauer said.

He added that agency agreements with underwriters usually do not speak to internal controls in any detail. Until now, other than the 2000 Escrow Internal Control Guidelines, ALTA has never issued a set of common agency control standards. These Standard Procedures and Controls are not designed to replace the 2000 Escrow Internal Control

Guidelines, but rather to be used in conjunction with them.

The Board concluded it will benefit the industry as a whole to have a set of standard procedures and controls. These guidelines will help improve the title industry by imposing consistent and fair standards against which every company is measured and by making it more difficult for those who do not wish to meet the minimum standards to remain as active participants in the industry.

- General Agency Administration and Control
- Settlement / Closing Process
- Escrow Accounting
- Policy Production and Underwriting
- Policy Control and Administration
- Market Conduct

Some general minimum control standards include maintaining financial information or statements in a manner that will be provided to the underwriter(s) upon request; maintaining the appropriate, valid

The implementation of these controls helps achieve several important goals, including improved customer service, reduction of errors, protection of depositors' funds, reduced potential for losses, and more effective and efficient control of operations.

Agents are responsible for maintaining adequate procedures and internal controls considering the size and complexity of their operations and local statutes.

The Standard Procedures and Controls for the Title Industry should be viewed as a control foundation, but not an all-inclusive list of internal control standards that would cover every risk of a particular agency operation.

Whether it's a multi-state agency or a single-county operation, Gauer said the standard procedures were written in a generic fashion to set forth the minimum internal control procedures that should be in place and operating within any title agency.

"They are primarily key controls as opposed to procedures," he said. "In practice, each operation will have its own detailed procedures underlying each of the controls that will vary with the size and complexity of the operation."

Gauer said it should not be too difficult for smaller-sized title agencies to implement these controls as most already have a majority of the controls and procedures in place in some fashion.

"Small agents can use the document as a checklist to ensure they have the minimum controls in place," he said. "If a small agency needs help with a particular control that is lacking, the agent may want to consult with agency supervision personnel of their underwriter."

“Lacking written control standards, auditors are left to measure control adequacy judgmentally or against their company’s expectations, which can vary widely among the insurers.”

ALTA's Agents and Abstracters Section also reviewed the standard procedures.

"Having a standard benchmark is a positive development for the entire industry," said Frank Pellegrini, chair of ALTA's Agents and Abstracters Section, "The Agents and Abstracters Section reviewed and approved the standard procedures, and is in total support of the industry adopting these measures."

These control standards are for voluntary adoption and use by ALTA members; however, ALTA encourages all of its members to incorporate these procedures and controls into their daily business practices.

The control standards are organized within the following processes:

license for all the states where the agency conducts business; current errors and omissions, malpractice and fidelity insurance policies and surety bonds; a filing and file storage system that adequately safeguards the closing files and escrow records, whether paper-based or electronic; a document retention program that complies with applicable federal, state and underwriter guidelines; procedures to ensure compliance with underwriter(s) contracts; submission of monthly escrow bank reconciliations to underwriter(s); and immediately reporting to underwriter(s) any occurrence or suspected occurrence of fraud, embezzlement or misappropriation of funds.



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# Top Lawsuits Impacting the Title Industry

ALTA's Title Counsel breaks down  
several cases decided in 2009

**W**ith the title insurance industry under constant scrutiny these days, there were a plethora of court cases handed down in 2009 that could impact title agents. To keep title agents abreast of what's happening in court rooms across the country, ALTA's Title Counsel Committee provided a synopsis of six lawsuits they believe have significant ramifications on the title insurance industry. >>

by ALTA Title Counsel Committee



Cases range from issues dealing with policy exceptions and RESPA violations to those focusing on IRS liens and foreclosures involving MERS mortgages. Members of Title Counsel providing the summaries include Marjorie Bardwell, Fidelity National Title Group; Stephen Gregory, Stewart Title Guaranty Co.; Eric Salter, Fidelity National Title; and Ella Gower, Miller Starr Regalia.

“Title professionals should take notice of these decisions, even if they are not from their state or jurisdiction,” Bardwell said. “The decisions could be used as precedent in their respective markets, and may indicate a trend in the interpretation of these legal issues. If agents and underwriters are unaware of these outcomes, their operations could be potentially vulnerable to unsuspected liabilities.”

In no particular order, the following are summaries of the facts from the lawsuits, the court’s decision and relevance to the title insurance industry.

**Nationwide Life Insurance v. Commonwealth Land Title Insurance Company**  
**U.S. Ct. of Appeals, 3rd Circuit,**  
**Case 06-2890**

**Aug. 8, 2009**

**Facts:** A \$3.5 million loan policy set out a declaration of restrictions as an exception in Schedule B by referring to the parties and recording information, and nothing more. The instrument contained a “right to refuse approval of future purchasers” and a separate option both running in favor of the original developer. The 1992 policy also contained an ALTA 9 coverage which addresses a loss based upon “a right of first refusal or the prior approval of a future purchaser or occupant” unless “expressly excepted” in Schedule



**B. Borrower gives deed in lieu. Lender tries to resell. The successor to developer refuses approval. The issue is what constitutes “express” exception.**

**Holding:** Court determined that “expressly excepted” was more than just routinely excepting. “Insurers may not except rights of refusal or other title restrictions from ALTA 9 Endorsement coverage simply by listing as exceptions the instruments in which they are embedded. Instead, the burden is on the title insurer to find and except them expressly.” The court goes on to state in a footnote that “restrictions’ include defects in title, liens, easements, encumbrances, conditions, and covenants ... affecting the insured property.”

**Relevance to the title insurance industry:** This is a reminder to our industry which has been focused on streamlining its products and processes that proper underwriting and format are still important to define what you are excepting (or trying to except). Trying to limit an affirmative coverage is always an area that needs to be carefully thought out.

**Samuel C. Johnson 1988 Trust, et al v. Bayfield County**  
**Wisconsin, U.S. District Court for the**  
**Western District of Wisconsin,**  
**Case no 06-cv-348-bbc**  
**June 26, 2009**

**Facts:** In 1980, the plaintiff acquired a long abandoned railroad right-of-way from the successor railroad owner. The Interstate Commerce Commission approved the abandonment of the line and the state of Wisconsin also disclaimed any interest. Bayfield County did not move within the allotted time (one year) to make the corridor a public right of way under the Federal Statutes then in effect. The 1922 statute in question waived the U.S.’s reversionary rights in certain lands granted to railroads in the 19th century to promote the expansion of the railroad if the property was found to be abandoned by judicial decision or act of Congress. In an amendment effective in 1988, the statute was changed so that the U.S. reversionary rights were not waived upon abandonment. This is commonly known as “Rails to Trails.” In 2006, the owners started a quiet title action. The U.S. disclaimed any interest.

The district court found no interest in the county, since its rights would be dependent on the fed's rights.

**Holding:** On rehearing the district court held the U.S. rights were not "abandoned" by the previous acts of the ICC or the disclaimer by the U.S., and therefore the county could, 16 years later, claim an interest to make the area a "public highway"(snowmobile trail). The case is currently on appeal to the 7th Circuit (Case no. 09-2876).

#### Relevance to the title insurance

**industry:** Many title examiners have relied on the acts of a U.S. agency (in this case the ICC) and the direct acts of the U.S. (disclaimer of interest) to insure titles free of the interest of the U.S. and those claiming under them. This decision could prove that reliance sorely misplaced.

#### Mary J. Paternoster V. United States Of America, 640 F.Supp. 2d 983 (2009)

**Facts:** Mary J. Paternoster and Michael D. Paternoster owned property in Ohio in a survivorship tenancy. On Jan. 21, 2004, the IRS filed a notice of federal tax lien with the Franklin County recorder. Michael died Jan. 26, 2004. In May 2007, Mary submitted an Application for Certificate of Nonattachment of Federal Tax Lien to the IRS, pursuant to 26 U.S.C. § 6325(e). In September, the IRS responded that the request seemed to comply with Ohio's tenancy and therefore the documentation submitted was sufficient. Mary then contracted to sell the property to a bona fide purchaser in an arm's length transaction. The settlement agent contacted the IRS to confirm the lien was no longer attached, to be told that

the IRS was taking the position that the lien remained. Mary went forward with the closing, escrowing an amount to satisfy the lien, and filed the action to determine her rights.

**Holding:** Judge Gregory L. Frost, of the U.S. District Court for the Southern District of Ohio, Eastern Division, held that the IRS was not bound by its response to the Application for Certificate of Nonattachment, nor was it bound by Internal Revenue Bulletin 2003-

■ This case invokes the classic John McEnroe response: "You cannot be serious." The decision was not appealed, and it's problematic whether or not any other circuit or district would follow the decision.

39, Notice 2003-60, which provided that a surviving joint tenant took free and clear of the lien. Rather, the judge decided that Craft and Brickley (citations in decision) controlled, even though neither case involved the death of the taxpayer against whom the lien was filed, and neither case was previously covered by IRS bulletin or notice. Judge Frost decided that the IRS was not subject to estoppel and was fully entitled to change its position. The judge also remarked that Mary obviously didn't rely on the bulletin or response to the application since she escrowed the proceeds, and noted that she had not filed any claim to the IRS for economic damages.

#### Relevance to the title insurance

**industry:** This case invokes the classic John McEnroe response: "YOU CANNOT BE SERIOUS." The decision was not appealed, and it's problematic whether or not any other circuit or district would follow the decision. Still, it would seem that under similar facts, a settlement agent (especially in Ohio) would be well advised to obtain an opinion in writing from the IRS rather than rely on the bulletin and notice.

#### Landmark National Bank v. Kesler

289 Kan. 528, 216 P.3d 158, 2009 Kan. LEXIS 834 (2009)

**Facts:** The borrower granted a \$50,000 first mortgage to Landmark, and later granted a \$93,100 second mortgage to MERS, as nominee for Millenia Mortgage Corp. The second mortgage was allegedly assigned to Sovereign Bank, but no assignment was recorded. The borrower defaulted, and Landmark filed a judicial foreclosure action, giving notice to the borrower and Millenia, but not to MERS or Sovereign. A default judgment was entered, and the property was sold at auction for \$87,000, leaving a surplus. Sovereign,

joined by MERS, filed a motion to vacate the default judgment, and MERS filed a motion to intervene. The trial court denied both motions, confirmed the sale, and ordered the surplus distributed to the borrower, who had been discharged from his debt to Sovereign in an earlier bankruptcy. MERS and Sovereign appealed.

**Holding:** The Kansas Supreme Court affirmed the judgment, holding that MERS was not a necessary party to the foreclosure action, and the trial court's refusal to join MERS as a party did not violate MERS' due process rights. The court reasoned that MERS had no interest in the underlying debt, and therefore suffered no loss as a result of the foreclosure (the opinion seems to assume that Sovereign had no independent right to receive notice of the foreclosure, because its interest was not disclosed by a recorded assignment, and because the mortgage itself only required notice to the "lender," i.e. Millenia). The court acknowledged the economic policy arguments in favor of an efficient mortgage-tracking system, but also pointed out the problems of a system in which the borrower and other lenders are unable to identify the holder of the note. In dicta, the court also suggested that if the mortgage is separated from the note, with the mortgage being held by one entity (MERS) and the note by another (the lender), the mortgage may be unenforceable.

**Relevance to the title insurance industry:** Title companies have insured many (probably millions) of MERS mortgages, and they have insured many property owners whose titles were derived from the

foreclosure of MERS mortgages. The Landmark opinion could be used as the basis for claims that these mortgages and foreclosures are defective. It should be noted, however, that similar issues have

## Four for the Road

Here are four quick summaries of cases that also impact the title insurance industry.

### 1. "What more do you want?"

**Kelly Burdette v. Brush Mountain Estates, LLC; Supreme Ct. of VA, Record No.082079; 2009 Va. Lexis 91, decided 9-18-09**

Property described with reference to a recorded plat which contained depiction of easement burdening that land and note "... private easement of ingress, egress ... for benefit of [tax parcel number of adjacent land] is hereby conveyed ..." was held NOT to grant easement depicted, because a "...Plat alone cannot serve as an instrument of conveyance" because the benefited land was not depicted on the plat (only the parcel number) and there was no "instrument of conveyance" to create and establish an easement in Virginia. Apparently "hereby conveyed" wasn't enough to establish the intent to grant the easement. YIKES!

### 2. "You gotta win some"

**Jewelean Jackson et al v. MERS, Inc. et al; Supreme Court of Minnesota, Case No. A08-397; 770 N.W. 2d 487; filed 8-13-09**

In a class action suit, the state supreme court answered the question certified to it that the assignment of interest in the underlying indebtedness for the mortgage being foreclosed by advertisement does not need to be recorded before commencement of the foreclosure.

### 3. "Right notice, wrong mailbox"

**NJ Lawyers' Fund for Client Protection v. Stewart Title Guaranty Co. et.al. Superior Ct. of NJ; Docket No. A-2622-07T1; 975A.2d 1016; decided 8-4-09**

Underwriter disclaimer of liability for attorney agent's closing activities was not effective when delivered only to the attorney and to the Insured.

### 4. "Update, down date, date down, whatever you call it"

**Stewart Title Guaranty Co. v. Residential Title Services, Inc et al; US District Ct, Eastern District of WI; Case no. O5C1197; 607F.Supp.2d 959; decided 3-27-09**

Failure of agent to recheck title before closing which resulted in gap claim was negligence under the contract that caused loss to underwriter.



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been litigated in other states, and the results have been mixed, with some courts ruling in favor of MERS.

### First American Title Insurance Company v. XWarehouse Lending Corporation

First District Court of Appeal, Aug. 28, 2009

98 Cal.Rptr.3d 801

**Facts:** Access Lending Corporation (now known as XWarehouse) acted as a warehouse lender to CHL Mortgage Group, Inc., under certain Master Repurchase Agreements. Access funded two loans (Esparza and Gill) for CHL in 2004 and pursuant to the MRA, received from CHL the loan documents including the notes, deeds of trust, and title insurance policies written through First American. No payments were made on either loan and CHL failed to repurchase the notes pursuant to the MRA. Access recorded assignments to themselves (as attorney in fact for CHL) and moved to foreclose both. Esparza sold at auction for \$300,000, but their right to proceeds from the sale was challenged in court by HSBC Mortgage Services based upon the CHL documents being forgeries. The Gill foreclosure was abruptly terminated when Gill alleged the note and deed of trust were a forgery, and filed suit to quiet title. Access tendered its claim for defense in both suits to First American, which claims were denied. First American sought declaratory relief that it had no duty to defend under its title policies.

**Holding:** The California Court of Appeal, First District, Division 3, affirmed the trial court's decision that First American did not owe a

duty to defend because Access was not an insured under the language of the policy. Specifically, the court looked to the provision in the policy that defined insured as "(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness..." Access argued that "indebtedness" was not defined in the policy, and that nowhere in the policy does it require that the indebtedness be valid. The court rejected that premise, stating affirmatively that it cannot be read as simply money changing hands as

under a very limited set of facts. The court based its decision on the finding that no funds were disbursed to a borrower, and therefore the "indebtedness secured by the deed of trust" policy coverage was not triggered. The case broke no new ground; the court cited similar holdings in *Pacific Am. Constr. V. Security Union Title*, 987 P2d 45 (1999) and *Gerrold v. Penn Title Ins. Co.*, 271 N.J. Super 50 (1994), both determining that there could be no coverage where there was failure to disburse proceeds to the named borrower. The court distinguished

It would be interesting to see if the outcome would be different under the 2006 policy, in which "forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation" is a delineated covered risk.

occurred between Access and CHL. Judge McGuinness also said that the insured mortgage described in the policy was a deed of trust between the named borrower and CHL, and therefore "indebtedness" could only reasonably be read to mean a debt from the borrower to CHL, and not any transfer of funds from Access to CHL. Thus, if the indebtedness itself was invalid, there could be no coverage under the policy.

**Relevance to the title insurance industry:** XWarehouse was decided under the 1992 ALTA Loan Policy

cases in which the fraud was perpetrated by the borrower from cases in which the failure of the indebtedness was due to the sole actions of the lender.

It would be interesting to see if the outcome would be different under the 2006 policy, in which "forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation" is a delineated covered risk. Conceivably, the court could still find that covered risk 2(a) (1) related to the borrower only, but the court could be persuaded that





the lack of definition left it open to a more global interpretation.

### **Tammy Foret Freeman Et Al v. Quicken Et Al**

**2009 WL 2448033 (E.D. La.)**

**Facts:** The plaintiffs filed suit asserting claims under RESPA and Louisiana law arising out of mortgage and loan transactions executed in 2007. Plaintiffs originally alleged that both entities charged unearned and/or nominal or duplicative fees in violation of RESPA in connection with the plaintiffs' mortgage loan closing. In particular, the plaintiffs alleged that Quicken charged a loan discount fee with no concomitant interest rate reduction. In addition, the plaintiffs alleged that Title Source charged an appraisal fee that was either split with Quicken, unearned and/or duplicative, and/or was excessive in relation to the services rendered, all in violation of RESPA. Quicken and Title Source filed a Motion for Summary Judgment arguing that under the plain language of Section 8, only fee splitting is prohibited under RESPA, that is situations in which a single charge is split between two parties, only one of which performed services on which the charge was based. They argued that summary judgment was proper

because the loan discount fees charged to the Plaintiffs were paid to and retained solely by Quicken, and that the appraisal fees were paid to and retained solely by Title Source. They also highlight case law to support their argument that RESPA is not a rate-setting or price-control statute.

**Holding:** In granting Quicken and Title Source's Motion for Summary Judgment, the court spends extensive time discussing and evaluating RESPA Section 8(b), HUD's 2001 Statement of Policy, and the circuit split as to whether Section 8(b) provides a claim in a situation where a single settlement services provider retains unearned fees. The court follows in line with other circuit decisions that have held that Section 8(b) only applies to divided fees.

**Relevance to the title insurance industry:** What is significant about this case is the extensive time spent by the court in discussing the four categories of fees that may give rise to RESPA violations (unearned split fees, markups, unearned/undivided fees, and overcharges), HUD's 2001 Statement of Policy [in which it states that in HUD's view, Section 8(b) forbids the paying or accepting

of any portion or percentage of a settlement service – including up to 100 percent – that is unearned, whether the entire charge is divided or split among more than one person or entity or is retained by a single person], and the analysis of the leading cases in various circuits. (See for example the discussion regarding *Cohen v. JP Morgan Chase & Co., Inc.* (2d Cir. 2007), *Sosa v. Chase Manhattan Mortgage Corp.* (11th Cir. 2003), *Santiago v. GMAC Mortgage Grp.* (3rd Cir. 2005), *Boulevard v. Crossland Mortg. Corp.* (4th Cir. 2002), and the trial court's ruling in *Wooten v. Quicken Loans, Inc.* (11th Cir. 2008).) This case serves as a good resource for future analysis and discussion regarding RESPA Section 8(b) and dividing/splitting charges.

### **Title Counsel**

The purpose and scope of work of Title Counsel is to promote the exchange of information within the ALTA membership about current developments in the law affecting title insurance and conveyancing. The committee establishes an institutional mechanism for sharing views on common legal problems, assists the ALTA's General Counsel in advising ALTA officers and staff on specific legal developments, assists the ALTA General Counsel in providing legal review of publications and other legal documents, acts as a task force on any legal problem facing the title industry which is identified by the Title Insurance Underwriters Section Executive Committee as warranting the committee's consideration, and assists the General Counsel in the development of bulletins to the membership on legal and general underwriting issues of broad concern.

# ALTA Meets With HUD, Major Lenders to Promote RESPA Implementation Consistency

The discussion with HUD provided an opportunity for greater cooperation between settlement provider partners and lenders.

**T**he American Land Title Association's president-elect and a member of ALTA's RESPA Implementation Taskforce recently attended a meeting with the Department of Housing and Urban Development (HUD) and major Federal Housing Administration (FHA) lenders to help promote consistency with regard to the implementation of the new rule under the Real Estate Settlement Procedures Act (RESPA).

HUD called the meeting to review proper application of the RESPA requirements in completing both the GFE and HUD. Anne Anastasi, ALTA president-elect, and Don Partington, a member of the RESPA Implementation Task Force, said the discussion provided an opportunity

for greater cooperation between lenders and settlement provider partners. Those in attendance included lenders that represented 80 percent of the national market.

## Issues Discussed

### Block 3/ 800 Series Services

The group discussed the placement of various standard fees into Block 3, as well as other fees (such as VA Funding Fees, 3rd Party Subordination Fees and HOA certification) that should also be shown in this area.

In the movement of Block 3 fees to the HUD-1, 800 series, there was also a discussion of the ability of lenders to obtain an itemization of those fees which the lender has credited in connection with

origination charge computation. HUD indicated that such itemization can be shown on an addendum, but if required by state law or regulation, may be notated on the appropriate 800 lines, outside of the column.

HUD also heard discussion of the problems encountered with VA Loans and the placement of various lender fees directly in the seller's column, instead of in the buyer's column with a credit on page 1. A resolution is expected to be forthcoming.

### Block 4 Services

ALTA was able to discuss requests by lenders for itemization of HUD Line 1101 charges of the settlement agent, even where such itemization is prohibited by the rule. Many lenders were pleased to hear ALTA's suggestion that settlement providers often have either worksheets or supplemental forms as addendums or have systems allowing for the creation of non-HUD-1 closing statements providing the needed detail.

### Block 5 Services

There seemed to be universal acknowledgement (if not acceptance) that the owner's policy was always shown in GFE Box 5 for purchase transactions and on Line 1103, borrower's column, on the HUD-1. Lenders are also struggling with the appropriate fees in jurisdictions that have either a single fee for owners and loan policies or where an owner's policy is optional.

### Block 6 Services

The main focus in this area was the ability of a lender to place in this category shoppable services that would otherwise be part of GFE Block 3. ALTA had a discussion with the Wells Fargo representatives about their practice of placing tax and flood items in this Block. Wells Fargo requested ALTA circulate that position more widely so they can avoid numerous inquiries they receive on the subject.

### Multi-Block Services

In addition to a discussion of a survey as an example of a charge that could fit into many categories based on the entity requiring the service, examples of doc-prep and title review were also discussed. Lenders expressed

■ Lenders are struggling with the appropriate fees in jurisdictions that have either a single fee for owners and loans policies or where an owner's policy is optional.

some frustration with not knowing which party might require the service throughout many jurisdictions and local practices. They indicated frustration was pronounced when one of the options is included in their own fee, possibly resulting in a zero tolerance problem.

### Correcting Tolerance Violations

There was significant discussion regarding tolerance cures, especially the view held by many in the title industry that no tolerance correction should appear on any page other than the first page.

HUD addressed its "restrained enforcement" position and advised that restrained enforcement only covers a party that has implemented

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the new RESPA rule in good faith. Implementation in good faith requires use of the new GFE and HUD-1 forms, and abiding by the intent of the new rule with regard to fee categories and tolerances.

HUD also addressed the practice of providing a consumer with a worksheet containing preliminary loan information. HUD advised that worksheets can be useful for generic rate quotes.

However, HUD also explained that:

- A worksheet should not look like a GFE and it should be clear that the worksheet is not a GFE.
- A worksheet never should be used “in lieu of” a GFE. If a consumer has provided the required elements of an application under a lender’s policy, a GFE must be provided.
- A consumer should not have to show an “intent to move forward” to receive a GFE.

With regard to pre-approvals, HUD advised that a pre-approval without the issuance of a GFE may be used in a purchase transaction only if the consumer has not executed

a purchase contract on a property. HUD also explained that a pre-approval may not be used with a refinance, and that a lender should never advise a consumer not to disclose their property address in order to avoid providing a GFE.

HUD indicated its intent to study the comments and suggestions made at the meeting, indicating that most new or changed information on the issues presented would be communicated through updates to the Frequently Asked Questions periodically updated on HUD’s web site.

## How to Handle Transfer Taxes on the New HUD-1

ALTA’s RESPA Implementation Task Force pointed out there were pervasive lender concerns over the handling of transfer taxes under the new RESPA rule. To clarify how to disclose these fees, HUD released an update to its FAQs on April 2. The RESPA Implementation Task Force said the update resolved the smoldering debate on the correct way to disclose transfer taxes.

Two new FAQs and answers were added to a new Section of the publication that now addresses Block 8 of the GFE (on approximately page 34). The first new FAQ simply defines “transfer taxes” as taxes that are “charged by state and local governments on mortgages and home sales based upon the loan amount or sales price and on the property address.” FAQ #2 in the GFE-Block 8 section probes deeper and clarifies how transfer taxes should be disclosed. It states: “The amount the borrower is likely to pay for transfer taxes is disclosed in Block 8 of the GFE. In some areas this amount, as a matter of practice, is governed by state or local laws. If state or local law is unclear or does not specifically attribute transfer tax to a seller or a borrower, the amount to be disclosed on the GFE is governed by common practice or experience in the locality of the property.”

This FAQ further noted: “If the seller is paying a portion of the transfer tax that was not disclosed on the GFE [as a borrower charge], then that portion should

be listed in the seller’s column in the 1200 series [of the HUD-1].” [Parentheticals added].

This FAQ should resolve the smoldering debate on the correct way to disclose transfer taxes, and should reduce, if not eliminate entirely, the instances where a lender disclosure error on the GFE triggers a significant tolerance violation curative obligation to the borrower.

So, lenders and settlement service providers may now look to settled “common practice” in a locality to guide them on how much of the transfer tax obligation should be listed as a borrower obligation in the GFE, where the split of that obligation is not addressed by state or local law. If the jurisdiction, for example, by custom and practice splits the transfer tax obligation 50/50, the GFE should show half of the tax in Block 8 of the GFE; and half of the transfer tax obligation should be in the seller’s column in the 1200 series, with the other half on the borrower’s side.

Where the parties enter into an agreement that modifies the statutory (or common practice split), HUD has informally concurred that such a deviation would constitute a “changed circumstance” permitting the issuance of a modified GFE (so long as the contractual split was not known at the time the initial GFE was issued).

Hopefully, HUD will similarly provide solutions to other, remaining thorny issues relating to RESPA Reform, as we move forward with its implementation.

# Title Agents Starting to Reap 'Unintended Benefits' from New RESPA Rule

The new GFE/HUD-1 forms have forced title agents to upgrade their technology and rethink how they do business.

BY BARBARA MILLER

To many, it was clear from the start that the 2010 regulatory changes to the Real Estate Settlement Procedures Act (RESPA) would cause more than a few hiccups across the title industry. The mandate from the Department of Housing and Urban Development (HUD) to use new Good Faith Estimate (GFE) and HUD-1 forms was an effort to make the settlement process a bit more transparent to the consumer. However, it quickly became apparent that implementing the new forms would cause a serious disruption to the existing, interrelated processes most firms had in place to ensure a speedy and effective closing. There would undoubtedly be a learning curve as mortgage lenders and settlement services companies alike rebuilt their workflows and implemented new processes to become compliant.

Today, some of the initial confusion has begun to subside. Opinions vary widely about the effectiveness of the new RESPA rule. But as the dust settles, we can begin to examine some of the collateral

impact the regulatory change has had upon the industry. And while it could be argued that RESPA reform has visited "unintended consequences" upon the industry, it can now also be argued that it has given birth to unforeseen benefits. In particular, the requisite upgrade of technology has provided firms with more and better ways to adjust to changing customer needs.

## The New HUD-1: More Than Just a Form Change

Whatever one thinks of regulatory change, it would be difficult to argue that the mortgage and settlement services industry is not changing as the result of it. The traditional customers of title agents and settlement services firms, mortgage lenders, are rethinking the way they originate a transaction. Lenders and



**A** Brenda Osiecki, co-owner of Wisconsin-based Waushara Abstract Corp., installed a new technology system to be prepared for the new RESPA Rule.

originators are doing this in the midst of a historically volatile market and while multiple regulatory schemes are being enacted. All are changing the way they do business. As a result, title companies are being forced to rethink the way they do business, too.

It is now apparent that more than a few title companies were operating with outdated technology or inadequate production systems as recently as late 2009. Whether they were producing orders manually or with the aid of obsolete and/or proprietary systems, they believed they were getting along just fine with what had worked for, in some cases, decades.

For settlement services companies, the process of closing a loan transaction is, in many ways, forms-driven. To bring the mortgage transaction to a fully funded and successful closing, a delicate ballet of interdependent processes must happen, and usually, at a breathtaking pace. One of the key elements of the 2010 RESPA regulation requires that the GFE, issued long before the title company begins its work, and the HUD-1, many times only completed a fraction of time before the closing commences, be in almost complete synchronization, with penalties for the lender in many cases should the forms vary.

As a result, operational processes that had been in place for decades have had to be scrutinized and reworked to allow for greater collaboration between lender and settlement services firms. In other words, the change of two simple forms has resulted in the mandated reinvention, in some cases, of the way title companies fulfill an order. But the consumer (and customer) expectation has remained that the

process, from the time of the sales agreement until the final closing, be a fast one. The forms change has not only required that settlement services companies change their processes and/or technology — it has also necessitated that they do it without an appreciable learning curve.

the plunge and installed a robust technology system. When Jan. 1, the mandatory compliance date for the new regulation, came, Waushara Abstract was ready.

Osiecki's story is not unique. Many firms were operating on proprietary systems at the time of the RESPA

■ There was no easy way to update these systems to reflect the significant forms and workflow changes required in order to comply with the new regulation.

### The Fix: Technology as a Short-Term Solution

With the requirement that settlement services firms use a new HUD-1, any firm using an outdated or unsupported technology to fulfill lender orders faced a stark choice: update its technology, or fall out of compliance, thus losing business. Combined with the challenging state of the market, this mandate was unwelcome at best.

Brenda Osiecki is the co-owner of Waushara Abstract Corp., a full-service title agency in Waushara, Wis. Like many small business owners in the space, Osiecki had little choice but to upgrade her proprietary technology in late 2009. As she pointed out “Our old system simply helped prepare the old HUD form.”

Although market conditions did not necessarily make it the best time to make an investment, Osiecki and partner Linda Grenier took

forms change. In many cases, those technologies were unsupported. There was no easy way to update these systems to reflect the significant forms and workflow changes required in order to comply with the new regulation. The title industry has always prided itself on its foundation of small businesses and entrepreneurs.

However, this has been an industry which is admittedly slow to widely adopting new technology. With customer demands increasing and margins shrinking in recent years, many small business owners argued that technology investments were a luxury. That perception was compounded by shrinking origination numbers for the past two years.

For many small agencies and firms, only the threat of law — and losing business — could bring about the decision to invest in new technology.

## The Future for Title Agents: How New Technology Helps Agents Adapt to a New Market

Although many title companies may have made the investment in new technology reluctantly, it now appears that there will be long-term benefits beyond staying alive and staying compliant. As the regulatory tidal wave continues to surge through the mortgage industry, lenders are beginning to seek greater oversight over the transaction, requiring additional reporting and communication from title companies. Moreover, as the competitive landscape shifts, many lenders are revisiting their own vendor selection. Increasingly, geographic flexibility is being required of title

firms, who are finding it easier to cover new territories with the help of flexible software, including access to jurisdiction-specific forms.

John J. Dwyer, Sr. of Beltway Title and Abstract, Inc. in Lanham, Md., has overseen the 39-year growth of a small firm operating from a single office to a multi-office regional business. Dwyer still remembers the days in which “we used a Radio Shack TRS80 computer to estimate closing costs,” which, at the time, was cutting-edge technology. While Beltway Title is not a newcomer to technology adoption, having used (and routinely updated) a nationally-known production software since 2002, its owner is cognizant of the benefits. Among those are the ability

to keep customers in the loop without having to expend time and manpower on manual updates (phone calls, etc.).

“Buyers, sellers, Realtors and loan officers are able to order titles on line and keep tabs on what has been done and what is yet to do, 24/7,” he pointed out.

Speed is also an essential requirement for lender business. Osiecki is pleased that her firm is able to “provide (its) clients with their orders much faster with the technology.” She noted that orders that once took a week to process, now take a day, cutting much of the data entry and other manual processes out of the equation.

It seems clear that the mortgage industry may still have changes to endure. There is no doubt that the demands of title customers will continue to change as well, not only to meet new compliance requirements, but to adapt to a roiling market as well. Although RESPA reform may not have been a welcomed change for many within the title industry, it is becoming clear that the technology upgrades necessary in the short term to be compliant, may, in the long run, make those same firms (and the industry as a whole) flexible enough to change with their customer needs.



**Barbara Miller** is co-founder, president and chief operating officer of TSS Software Corporation. Miller's professional career spans all

aspects of the land title business, from searcher and processor to title agency manager.





## Utah Governor Signs Bill Banning Private Transfer Fees

Utah Gov. Gary Herbert signed legislation March 16 that bans the use of private transfer fees, which require consumers to pay thousands of dollars to third parties that hold no ownership interest in the property for the right to buy or sell real estate.

The bill declares certain covenants, restrictions, agreements, and other instruments and documents that obligate a future buyer or seller to make a payment upon the transfer of real property to

be void and unenforceable. The bill does not impact private transfer fees already recorded.

Utah becomes the fourth state to ban private transfer fees. Ohio and Louisiana have similar bills pending that would ban private transfer fees as well. For help in getting this legislation introduced in your state, contact Justin Ailes at [jailes@alta.org](mailto:jailes@alta.org).



Utah Gov.  
Gary Herbert

## CourtsOnLine Introduces New Service for Midwest Title Plants

Redmond, Wash.-based CourtsOnLine began expansion of its automated court case acquisition service to title plant operations outside the Northwest. The Ohio plant expansion project marks another milestone in the CourtsOnLine plan to establish a national market footprint for its services to title plant operations, according to Gary Vowels, chairman of CourtsOnLine. CourtsOnLine has

provided newly filed court case information to title plants daily since 2001. According to the company, this information assists title professionals conduct research to determine if there are court cases involving the buyers or sellers of real property that could compromise title insurance. CourtsOnLine provides access to various court records for all or a portion of 22 states.

## National Lender Selects Exclusive Settlement Agent for Residential Deals

American Financial Resources Inc., a nationwide mortgage lender, has selected Timios Inc. as its exclusive agent to conduct closings and escrow services for all residential mortgages where permitted by state and local laws.

Timios is a nationwide provider of title insurance and settlement services, and utilizes a centralized processing and fulfillment model with one company-wide operating system.

“The selection of Timios Inc. as our exclusive settlement agent strengthens our position to ensure the integrity and full compliance with each and every loan transaction,” said Richard Dubnoff, CEO. “In addition, this partnership brings multiple benefits for our customers doing business with us. For our wholesale mortgage brokers, it means lower costs and better service. Borrowers will no longer have to cover escrow service fees as AFR will pick up the cost at closing. Brokers will no



longer need a Closing Protection Letter and E&O insurance. Brokers will also receive instant order confirmation, be given a dedicated closing specialist, and they will have same day disbursement of escrow.”

Dubnoff said brokers, borrowers, Realtors or sellers may continue to select the title insurance company of their choice. In the event they choose Timios as their title agent, AFR has negotiated reduced pricing where allowed by state and local laws.

Last year, American Financial Resources closed \$1.4 billion in loan volume. Established in 1998, AFR is a HUD Direct Endorsement FHA lender, Fannie Mae approved seller/servicer and GinnieMae Issuer. AFR is approved to do business nationwide and is currently one of the top 25 largest FHA lenders in the country.

### First of American Works to Resolve BofA Lawsuit

Bank of America filed a lawsuit in March against the First American Title Insurance Co., claiming the title insurer wrongly denied or failed to timely respond to more than 5,000 of the bank's claims related to title defects.

The claims are in relation to more than \$500 million of loan losses tied to defaulted home equity loans and lines of credit, according to the complaint, which was filed in the North Carolina Superior Court.

First American issued a statement saying it regrets that its "valuable customer, Bank of America, has chosen to file a legal action against the companies. However, we are hopeful that we will be able to resolve this matter outside of court with continued discussions."

According to the complaint, First American and its subsidiary, United General Title Insurance Co., entered into an agreement with Fiserv appointing Fiserv as the agent of the insurers in connection with insurance policies issued by United General and First American to lenders that participated in Fiserv's QuickClose

Lien Protection Insurance Program, including policies issued to Bank of America.

Fiserv marketed the QuickClose product as a replacement for conducting traditional title searches, the complaint alleged.

"A basic premise of the program was that a participating lender would no longer conduct title searches in connection with loans processed under the program in order to verify ownership or to identify existing liens on the collateral property," the complaint said.

In responding to the suit, First American noted that its Lien Protection Insurance Policy, which was designed for HELOC loans, Bank of America was required to satisfy certain criteria before title was insured. Such criteria included reviewing credit reports, reviewing the borrower's loan applications and interviewing the borrower. The bank was to analyze the information to confirm the borrower's ability to repay, the ownership of the real property collateral and what liens encumbered it. All of the claims at issue fall into three categories, including lien-position, vesting and legal-description.

### Texas Bank Launches Title Agency

A Texas-based bank reported it will open its own title insurance agency in an effort to provide a one-stop shop for its customers. Amarillo National Bank said it will open two Circle A Title offices in May.

"We wanted to do this for our customers and for the Realtors and it's going to make quicker closings and happier customers," William Ware, executive

vice president of Amarillo National Bank, told Connect Amarillo.

Amarillo National Bank reported it has a market share of 30-50 percent of the home mortgage loans in Amarillo.

"We have a large mortgage department, and we felt like this was a great opportunity to bring everybody together in a one stop shop," Ware said.

### Midwest Law Firm Forms Title Agency

A law firm with offices in Kentucky and Ohio announced it has formed a title agency.

DBL Law said it has opened Excel Title Services, which will offer title insurance and coordinate title services for clients.

The agency is licensed in Ohio and Kentucky. Its staff includes two real estate attorneys who are also licensed title insurance agents.

"Excel Title is a natural extension of what we have historically been providing to our clients," said Patrick Hughes, a DBL partner and Excel officer.

Excel's services include title exams, closing coordination and judicial title reports, according to a news release.

DBL Law, also known as Dressman Benzinger LaVelle, is a full-service law firm with 38 attorneys.

### Simplifile Reports Strong First Quarter

Simplifile, a provider of electronic recording software, experienced a 147 percent increase in document volume e-recorded through its system in the first quarter of 2010 compared to March 2009.

Simplifile also expanded its e-recording network during the same time period and added 30 new counties to the number of live e-recording jurisdictions available through the Simplifile e-recording system.

### Stewart Specialty Insurance Services Names New Division President

Stewart Specialty Insurance Services (SSIS), a wholly owned subsidiary of Stewart Title Company, appointed **Tom Carpentier** to the position of division president. In his role, Carpentier will be responsible for directing and managing the day-to-day operation of SSIS, as well as implementing an integrated strategy shaping SSIS into a value-added resource for the company and its customers. Carpentier joins SSIS from American National Insurance Company where he served as vice president of Special Markets for the Credit Insurance Division in League City, Texas. He has 14 years of sales and operations management experience in the insurance and financial services industry.

### Agents National Title Adds Underwriting Counsel, State Manager

Agents National Title Insurance Co. recently named **Cheryl Cowherd** as underwriting counsel, while **Scott Hannaford** was tapped as its Kansas Area Manager.

Cowherd graduated from William Jewell College with a degree in International Relations and International Business. In 1993 Cowherd received her Juris Doctorate from the St. Louis University School of Law. Cowherd brings extensive experience in all aspects of title business including production, search, exam, and escrow (both commercial and residential) and has worked with an agent and an underwriter. Since

2000, Cowherd worked for a national title insurance underwriter, both as underwriting counsel and agency account manager.

Hannaford will be responsible for growing the agency network for the company primarily in the State of Kansas. Hannaford graduated from Kansas State University with a degree in marketing. He is a fourth generation title professional having worked in the family title agency in Marion, Kan. He was fortunate to learn the basics of the title insurance industry from his father and grandfather.

### Ohio-based Resource Title Appoints COO

**Andrew Rennell** has been promoted by Resource Title to the position of chief operating officer, where he will oversee global day-to-day operations of the Independence, Ohio-based title and settlement services firm. In his new role, Rennell will manage operations in each of the agency's six regional offices nationwide. He will also spearhead Resource Title's deployment of virtual offices in over 20 states, using best-in-class technology. In addition to overseeing production and operations, he will be responsible for all elements of Resource Title's technology, workflow and processes. Rennell has worked with Resource Title since 2003.

### Stewart Bolsters National Business Development

**Robert Reeder** has joined Stewart National Title Services as vice president, national business development, in Atlanta. In this

role, Reeder will be responsible for the continued growth of Stewart's national commercial business, with a focus on expanding the company's services in the southeastern region of the U.S. Reeder most recently served as vice president, commercial sales and relationship manager for the national commercial services division of First American Title Insurance Co. in Atlanta. He has 33 years of experience in the title industry, and has specialized in commercial real estate since 1991.

### Alliant National Title adds VP to Bolster Support Services

Alliant National Title Insurance Company announced that **Janet S. Minke** has joined the company as vice president, underwriting support services. Minke supports Alliant National independent agents by providing training, education, and expertise, and by responding to underwriting questions. Minke began in the title insurance industry as an escrow assistant at a title agency and swiftly rose to executive vice president, handling business development, human resources, local title underwriting and supervision of claims handling, among other duties. After 24 years, she moved to the underwriter side of the business, and has been responsible for quality assurance, technical training, business solutions, standardizing national forms, implementing an internal title and escrow system, and developing resources and courses for agents.

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# The Destruction of the Title Industry

I hope the title of this article doesn't cause anyone too much distress. I also hope that we don't ignore what's going on in different parts of our country.

It appears that at least three states, possibly more, are considering the implementation of a government-run title entity. Different proposals exist: a government-run title entity that would compete with the existing traditional private sector title industry; or an operation without competition from the existing private sector.

Most of these proposals favorably reference the "Iowa Plan" as proof that a state-run title insurance entity can work. Unfortunately, while these states like to reference the Iowa Plan, none of them appear to pay any attention to the comments from Iowa about title insurance in Iowa. In 1947, the Iowa legislature banned the sale of commercial title insurance within the state. In 1985, 38 years after the ban was put in place, the Iowa State Title Guaranty was created to fill a needed void, according to John Eisenman, president of the Iowa Land Title Association. His point, which is significant when discussing the Iowa system, is that the Iowa State Title Guaranty wasn't created to replace the private sector. It's that fact why Eisenman stresses "The Iowa System works for us, but it cannot work successfully anywhere else." Even the head of the Iowa Title Guaranty, Lloyd Ogle, states that it is not practical to ban title insurance and create Iowa-like systems in other states.

We can't ignore the attempts by government to threaten our industry by unfairly competing with us or putting us out of business. If government can put a healthy private sector industry out of business, then what industry is next? Where does the line get drawn?

The information used to support these proposals is not accurate nor is it complete. There is no discussion of the startup cost that will impact state finances; and the need to hire and manage staff (and the results on private sector employment). These proposals do not address the loss of tax revenue (unless the state is intent on taxing itself). There is no provision in these proposals that addresses the need to have claims handling capability and reserves in place to actually pay claims.

Our industry needs to be in the forefront of this debate ... not because we are afraid of competition. In fact, we welcome it. Our industry has an opportunity to take a proactive and positive role to educate legislators and policy makers about the title insurance business and all the good that it creates for homeowners and the economy. We cannot remain silent and watch idly as the future of our industry is jeopardized.

– Chris Abbinante  
Chair, Underwriters Section





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