

December 2010

Official Publication of the  
American Land Title Association

# TitleNews

## The New Financial Industry Sheriff

Passage of the Dodd-Frank Act  
brings significant changes to the  
title industry in 2011 and beyond



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ALTA 2011 Federal Conference  
Liaison Hotel  
Washington, D.C.

May 15 - 17

2011 Business Strategies Conference  
Las Vegas, NV

October 12 - 15

2011 ALTA Annual Convention  
Charleston Place,  
Charleston, SC

# TitleNews

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Plan to Attend  
ALTA's 2011 Federal  
Conference and Lobby Day

MARCH 13-16, 2011  
Liaison Hotel  
ON CAPITOL HILL  
Washington, D.C.

*If it's affecting title  
professionals and  
involves federal  
legislators and  
regulators, you'll  
hear about it at  
ALTA's Federal  
Conference.*



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## Advocacy Never Sleeps

December is often a slow month in D.C., filled with holiday parties where it's important to make an appearance, but typically not a month of much consequence for the country. Not so this year. The 111th Congress is in town in a "lame duck" session to decide, among other things, whether or not everyone's taxes will go up in 2011. (Nothing like a little predictability!) A mid-term electoral tsunami has also washed into town 93 new Representatives and 16 Senators as members of the 112th Congress. None of them have a vote on the tax issue, but they are sure making a lot of noise as the GOP prepares to take over control of the House after a four-year hiatus.

Here at ALTA, our job is to make sure that the new members of Congress and their staff know who we are and what we do. All the new faces on Capitol Hill present a teaching opportunity to ALTA and its members, and strange as it sounds, we couldn't ask for a better backdrop than the foreclosure documentation crisis to explain the role of the title industry in creating secure and efficient real estate transactions. ALTA President Anne Anastasi led the charge in her recent testimony before the House Financial Services Committee (see the article on page 25), and we are still handling a large volume of press calls. But nothing substitutes for a face-to-face visit, which is where you come in.

Plans are already underway for ALTA's 2011 Federal Conference and Lobby Day, and with so many new faces in town, I can't stress enough the importance of your attendance. For those who have never attended, we build the conference around a day of visits by ALTA members to their congressional representatives. The idea is that you tell your own story and the important role your industry plays in the local economy to your own elected representatives. These meetings are set up in advance by ALTA staff, and during the conference itself, which occurs the day before "Capitol Hill Day." During the conference, you will hear from government officials, regulators and experts on a range of issues important to your business. The conference is only three months away, (March 13-16 at the Liaison Hotel on Capitol Hill in D.C.) so it's not too early to visit ALTA's web site ([www.alta.org](http://www.alta.org)) where you can register.

For those of you who are already politically active enough to know your representative, please let the ALTA staff know of that personal relationship. It will help us in setting up your Federal Conference meeting and it can be of great help to our advocacy efforts to have a title professional from "back home" call their representative on an issue important to the industry; and we've got plenty of issues ongoing and on the horizon. I've always believed that one of the blessings of the American system of government is that we get exactly the government we deserve. Americans are starting to pay attention again on a range of issues and if we hold that attention, it should produce a more accountable, responsive government. Those of us in the title industry need to be among the best keepers of that watch, remembering always that we'll reap the fruit of our action or inaction, which is why advocacy can never sleep.

May your holidays be filled with blessing and good cheer,



– Kurt Pfothauer  
Chief Executive Officer, ALTA



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## HUD Releases Three Videos to Help Consumers Navigate Homebuying Process

The U.S. Department of Housing and Urban Development (HUD) unveiled three how-to videos to help prospective homeowners find a home they can afford, shop for a mortgage they can sustain and know what to expect when they go to closing.

HUD produced the three consumer education videos in coordination with the National Association of Realtors (NAR) and released them at the Realtors annual convention in New Orleans. Each video focuses on a critical part of the homebuying process including Shopping for your Home, Shopping for your Loan, and Closing the Deal.

“The process for buying a home can appear complicated and overwhelming for many consumers,” said David H. Stevens, HUD’s assistant secretary for housing and federal housing commissioner. “These videos will help answer the fundamental questions most people have – from shopping for their home to signing on the dotted line.”

HUD’s videos are easily accessible from HUD’s web site as well as from HUD’s YouTube channel, [www.youtube.com/HUDchannel](http://www.youtube.com/HUDchannel). The videos include:

### Shopping for your Home

The homebuying process obviously starts with finding a place you’ll want to call home. This short video will instruct viewers on assessing how much of a home they can afford, working with a real estate agent and what happens once they find the home they want to buy. Housing counselors can assist home buyers and home owners on issues such as home buying, fair housing, credit issues, and foreclosure prevention.

### Shopping for your Loan

Once you’ve found the home of your dreams, the next step is to shop for a mortgage loan. This video will help consumers use the good faith estimate (GFE), which is a form that spells out the terms of a loan offer, to shop for the best loan for them.

Consumers will learn how to use the GFE to determine how long an interest rate is available for a particular loan and how to identify key loan terms and costs of a particular loan offer. HUD suggests consumers shop and compare GFEs from multiple mortgage brokers and/or lenders in order to get the best loan for their situation.

### Closing the Deal

Finally, this video walks consumers through the actual closing process including how to make sure the loan they were offered closely matches what they encounter at the settlement table. In particular, HUD will walk the viewer through the HUD-1 Settlement Statement and demonstrate ways consumers can compare their actual costs with those reflected on their Good Faith Estimate.

## Don’t Miss the 2011 ALTA Federal Conference

ALTA’s 2011 Federal Conference and Lobby Day, which is being held March 13-16 at the Liaison Hotel on Capitol Hill in Washington, D.C., is the best way for title professionals to meet with Congressional leaders to discuss the importance of the industry and to share how federal decisions impact the future of your business.

The many new faces on Capitol Hill provide ALTA and its members a great

teaching opportunity to share how your industry facilitates efficient and secure real estate transactions.

ALTA will set up meetings with your Congressional leaders so that you can share this message. You will also hear from key government officials, regulators and experts on several issues and legislation that your business will face in 2011. Check the ALTA web site for a schedule of events.

## NAIC Title Insurance Task Force Sets Goals for 2011

The National Association of Insurance Commissioners' Title Insurance Task Force set several goals during its October meeting in Orlando.

The Task Force will continue to study issues related to title insurers and title insurance producers. It plans to coordinate with the Financial Condition Committee to modernize the solvency regulation of title insurance. These efforts may include: determining the attributes of recent title company financial failures; developing risk-based capital requirements, early warning tools, and risk-focused financial examination guidelines for title insurers; reconsidering existing accounting standards for title insurers' liabilities and assets; and requesting the NAIC to provide statistical compilations of Title Annual Statements.

The Task Force plans to assist various regulatory bodies in combating fraudulent or unfair real estate settlement activities. Such efforts may include: working with the Antifraud Task Force to combat mortgage fraud; and mitigating title agent defalcations through the promotion of closing protection letters and other remedies.

A Title Statistical Plan Working Group will be appointed to develop implementation strategies to assist states in collecting data related to the Title Insurance Agent Statistical Report. This will more than likely involve the development of a guideline to collect data and to maintain confidentiality of the data, the NAIC reported.

The Task Force also wants to examine ways to mitigate the impact of title insurer insolvencies on policyholders. Such efforts may include: reviving work on the Title Insurance Guaranty Fund Model Act; promoting the use of blanket lender's policies and individual owner's policies to replace policies issued by insolvent insurers; and examining the financial failures of title agents.

The group will work to determine the feasibility of promoting effective consumer shopping for title agents and insurers without delaying real estate closing schedules. The Task Force will consider developing best practices for the design and implementation of title cost comparison guides for consumers.

The NAIC also wants to appoint a Title Annual Statement Instructions

Subgroup to update and revise the title insurer annual and quarterly blanks and instructions to the NAIC accounting statements and to prepare a proposal for the Blanks Working Group. According to the NAIC, the proposal should be sent to the Blanks Working Group in advance of the 2011 Spring National Meeting and report results at the 2011 Summer and Fall National Meetings.

The NAIC also wants to determine an appropriate format for communicating the various findings of the Task Force, such as writing a white paper, crafting best practices guidelines, or revising the Title Insurers Model Act (#628) and Title Insurance Agent Model Act (#230).

ALTA will work closely with the NAIC's Title Insurance Task Force as it develops these initiatives.

## ALTA Board Approves 2011 ALTA/ACSM Land Title Survey Standards

The ALTA Board of Governors approved the proposed 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys during its meeting Oct. 14. The new requirements will be presented to the leadership of the National Society of Professional Surveyors (NSPS) and the American Congress on Surveying and Mapping (ACSM) for the next steps in the adoption process. If approved, the new standard will become effective on Feb. 23, 2011.

The ALTA-approved version has been re-formatted for easier reading and reflects several

technical and grammatical corrections since the draft was first posted in August. Learn more by downloading the approved version from the ALTA Web site at [www.alta.org/](http://www.alta.org/) forms under the "Related Documents - Proposed for Approval" section.





## ALTA Announces Two Additions to Staff

The American Land Title Association (ALTA) announced the addition of Kelley Williams and Steve Gottheim to its staff.

Williams will serve as



manager of government affairs, responsible for managing

ALTA's Title Insurance Political Action Committee, cultivating ALTA's grassroots initiatives, overseeing compliance issues and lobbying at the federal level. Gottheim was named legislative and regulatory counsel, focusing on policy research and development, and will serve as a resource for members regarding legislative and regulatory issues.

Previously with KPMG LLP, a global network of professional firms providing audit, tax and advisory services, Williams worked in the Office of Government Affairs where she managed the KPMG PAC, political compliance and grassroots objectives for the firm.

"With the legislative and regulatory climate remaining uncertain, it's paramount ALTA reinforces its voice and continues to reach out to policymakers,"

said Kurt Pfothauer, chief executive officer of ALTA. "Kelley brings new fire power to ALTA that will bolster our grassroots and advocacy efforts."

Gottheim will serve as



a liaison with legal trade organizations including the American

Bar Association, National Conference of Commissioners on Uniform State Laws and the American College of Real Estate Lawyers.

"At a time when the market remains volatile and the regulatory and legislative landscape continues to change, I am certain Steve's contributions will enable us to increase our responsiveness to the industry in a manner that brings value to the work our members do each day," Pfothauer said.

A graduate of the University of Maryland College Park in 2006, Gottheim earned his Juris Doctorate in 2009 from the University of Maryland School of Law. Previously, he worked for the Senate Banking Committee, and a small community-based lender.

## ALTA Urges Protection of Lien Priorities in Developing Energy-Efficient Retrofit Projects

ALTA and two other trade associations, the National Association of Real Estate Investment Trusts and Real Estate Roundtable, sent a letter to leaders of the Senate Energy and Natural Resources Committee urging the committee to study how this principle of mortgage lien priority as it considers authorizing the U.S. Department of Energy (DoE) to administer a federal loan guarantee program that backs debt for building clean energy and energy efficient retrofit projects.

ALTA supports efforts to incentivize energy efficiency retrofits in residential and commercial buildings; however, the association urges careful review to ensure that any such proposals do not alter traditional lending priorities that would subvert the security interests long held by mortgage banks in properties they finance. Such alterations would put the availability of credit at risk.

Two bills (S. 3746 and S. 3780) would authorize DoE to administer a federal loan guarantee program that backs debt for building retrofit projects. Both bills

would amend Title XVII of the Energy Policy Act of 2005 (EPAAct), the statutory authority for DoE's existing loan guarantee program. The EPAAct contains provisions requiring that debt obligations backed by federal guarantees must not be subordinate to other financing.

This could impact lien priority if loans for retrofit projects are given superior position. The principle of "mortgage superiority" is an industry standard written into deeds of trust and other mortgage documents, including Fannie Mae's uniform security instruments. Borrowers would likely be in breach of contract if they allowed a secondary lender (such as one extending a home equity loan) to occupy a more favorable lien position on the asset to the detriment of the bank providing a mortgage loan in the first instance. Similarly, junior mortgagees receive lien priority based on "first in time" principles after the first mortgage. Junior lienholders also expect that their liens will not be subordinated to other financiers that come later in time.

# The New Financial Industry Sheriff

Passage of the Dodd-Frank Act brings significant changes to the title industry in 2011 and beyond

**T**he Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act), enacted by President Obama on July 21, 2010, marked the most sweeping financial reform since the 1930s. It was primarily an attempt by Congress to tame Wall Street, big banks and the residential mortgage industry, while protecting consumers in financial transactions, including credit cards and mortgages. The Act creates a new federal agency to protect consumers that will oversee and implement 18 consumer financial laws and impose a broad range of penalties, including steep civil money penalties, for repeat violations of these laws. >>

By Jeremy Yohe



“The sheer magnitude of the Act is overwhelming. It contains 16 separate titles and is over 2,300 pages long,” said Kurt Pfothenauer, chief executive officer of ALTA. “It will require 243 new federal regulations, 67 one-time reports, and 22 other periodic reports to Congress. All industries connected to financial transactions covered by the Act will be affected by its provisions, including the title insurance and settlement industries.”

Although persons regulated by state insurance regulators are not subject to the regulatory authority of the Consumer Financial Protection Bureau (Bureau), title insurance and settlement companies are required to comply with the Real Estate Settlement Procedures Act (RESPA), which the Bureau will enforce. Title insurance and settlement companies, therefore, could be subject to penalties imposed by the Bureau for any violations of RESPA.

According to Phil Schulman, partner with the D.C.-based law firm K&L Gates, because of credit risk retention requirements and a new “ability to repay” standard imposed

on lenders, risky loan products should be eliminated, which should mean fewer title insurance claims for title companies.

“Changes to the Home Ownership and Equity Protection Act (HOEPA) also could result in more transactions qualifying as high-cost mortgages when fees are paid to affiliate title insurance providers, and closing agents should expect modifications to the HUD-1 as a result of prohibitions on yield spread premiums and disclosure changes related to appraisal fees,” Schulman said.

### **Bureau of Consumer Financial Protection**

Title X of the Act established the Bureau as an independent agency within the Bureau, which will have broad authority to write rules to ensure that all consumers have access to consumer financial products and services and to ensure that markets are fair, transparent and competitive. The Bureau will have direct authority to regulate: all mortgage-related businesses, including lenders, servicers, and mortgage brokers,

large non-bank financial companies, such as large payday lenders, debt collectors, and consumer reporting agencies, and banks and credit unions with greater than \$10 billion in assets. However, the activities of real estate brokers, persons regulated by a state insurance regulator, auto dealers, accountants, and tax preparers, to name a few, will not be covered by the Bureau’s regulatory authority. Significantly, because of successful lobbying by ALTA, this means that the Bureau will not have general authority to regulate title insurance products and persons engaged in the business of title insurance under state laws. Persons and entities engaged only in escrow and closing services, however, may be subject to the Bureau’s authority if these activities are not deemed to qualify as title insurance business.

The Bureau also is charged with taking over the regulatory responsibility for approximately 18 different and existing consumer protection laws, including the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Gramm-Leach Bliley Act, the Truth in Lending Act (TILA), RESPA, and the SAFE Act, to name a few. In addition, the Bureau is given broad regulatory powers to identify unfair and deceptive practices, mandate the form and content of all consumer disclosures, and impose registration requirements as the Bureau deems necessary. While the Bureau may not have regulatory authority over state-regulated title insurance entities, title companies must comply with the disclosure and anti-kickback provisions of RESPA, Schulman said.

Any violations of RESPA will soon subject title and/or closing entities to the regulatory and enforcement



authority of the Bureau. Moreover, as the Bureau is charged by the Act with creating a single combined RESPA (Good Faith Estimate) and TILA disclosure within the next two years, closing agents should expect the Bureau to modify the HUD-1 to coordinate with this new single disclosure.

Along with the Bureau's regulatory powers comes a broad range of penalties that the Bureau may impose on those subject to its regulations. These penalties include rescission, refunds, disgorgement, damages, and civil money penalties, which could go beyond the penalties currently available under existing consumer financial protection laws. Notably, with regard to civil money penalties, the Bureau could impose a maximum penalty of \$5,000 per day for violations of consumer financial laws, including RESPA. If violations are deemed to be reckless violations, the maximum penalty increases to \$25,000 per day, and a person or entity could be responsible for maximum daily penalties of \$1 million for any knowing violations of consumer financial laws.

As title insurance and settlement companies must comply with RESPA's regulations, the Bureau will have the authority to impose these monetary penalties on title and settlement companies for violations of RESPA.

"The laws now enforced by the new Consumer Financial Protection Bureau will have serious teeth," Pfothenauer said. "While ALTA was successful in limiting the scope of the CFPB's authority over the title insurance industry, legislators were adamant that penalties would remain in place for violators of consumer protection laws."

The Secretary of the Treasury designated July 21, 2011, as the date for the transfer of functions to the CFPB.

### Anti-Steering Provisions/Loan Originator Compensation

In an attempt to prevent the steering of borrowers to particular mortgage products, the Mortgage Reform Act prohibits a mortgage originator from directly or indirectly receiving compensation that varies based on the terms of the loan (other than the amount of the principal). This effectively ends the payment of yield spread premiums based on the interest rate or other terms of the

address this prohibition on interest rate-dependent mortgage broker compensation," Shulman said.

### Minimum Standards for Mortgages – Ability to Repay

Under regulations to be prescribed by the Bureau to amend TILA, the law prohibits creditors from making residential mortgage loans (closed-end, dwelling-secured loans) unless the creditor makes a good faith determination, based on verified and documented information, that the consumer had a reasonable ability to repay the loan according to its terms and all applicable taxes, insurance and assessments at the time the

■ "The laws now enforced by the new Consumer Financial Protection Bureau will have serious teeth."

loan. Despite the prohibition, various payments to mortgage originators are permissible. Also, based on the definition of "mortgage originator," this compensation provision is limited to closed-end, dwelling-secured mortgage loans, but the provision applies to compensation paid by lenders to independent mortgage brokers, as well as compensation paid to a lender's employee sales force. From a settlement agent's perspective, with the exception of discount points charged in a mortgage loan transaction, this prohibition all but makes Line 802 on the HUD-1 (credit for interest rate chosen) obsolete.

"Settlement agents should expect modifications to the HUD-1 to

loan was consummated. Without this determination, a creditor could end up providing a borrower with a defense to any foreclosure action that may occur at a future time.

Finally, the Mortgage Reform Act provides that a creditor making a residential mortgage loan, and any assignee of the loan subject to liability under TILA, may presume that the loan has met these new ability to repay requirements if the loan is a "qualified mortgage." In other words, if a lender originates only "qualified mortgages," it may take advantage of presumed compliance with these new TILA "ability to repay" requirements. So, much like the securitizers trying to avoid the credit risk retention requirements, loan originators are

likely to focus almost exclusively on the origination of plain vanilla “qualified mortgages.”

### Qualified Mortgages

With the enactment of the Dodd-Frank Act and the ability to repay requirements under the Mortgage Reform Act, gone are the days of creative and risky mortgage products. Instead, to take advantage of the presumed compliance with the ability to repay standards, as well as to avoid securitizing loans with a 5 percent economic interest, the mortgage industry is likely to see more and more “qualified mortgages.”

“From the title insurance industry’s perspective, more and more low-risk ‘qualified mortgages’ in the market could mean fewer title insurance claims in the future,” according to Schulman.

The law amends TILA and defines “qualified mortgages” as a closed-end, dwelling-secured loan for which all of the following apply:

- The regular periodic payments for the loan may not: (i) Result in an increase of the principal balance; or (ii) Except for certain balloon loans, allow the consumer to defer repayment of principal;
- The terms of the loan do not result in a balloon payment (i.e., a scheduled payment that is more than twice as large as the average of earlier scheduled payments), except under certain circumstances;
- The income and financial resources relied upon to qualify the obligors on the loan are verified and documented;
- In the case of a fixed rate loan, the underwriting process is based



on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

- In the case of an adjustable rate loan, the underwriting is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;
- The loan complies with any guidelines or regulations the Bureau establishes relating to debt-to-income ratios or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the borrower’s income levels and such other factors the Bureau establishes;
- The total points and fees payable in connection with the loan do not exceed 3 percent of the total loan amount (the Bureau is required to prescribe a points and fees threshold for “smaller loans” to meet the requirements of this presumption,

considering the potential impact on rural areas and other areas where home values are lower); and

- The loan term does not exceed 30 years, except as such term may be extended under certain circumstances, such as in high-cost areas.

### Arbitration

In addition to prohibitions on prepayment penalties, the law prohibits provisions for mandatory arbitration in residential mortgages and open-end consumer credit secured by principal dwellings. However, the consumer and the creditor or any assignee may still agree to arbitration or any other non-judicial procedure as the method for resolving any controversy at any time after a dispute or claim arises.

Schulman said this provision reflects a heavy bias by Congress against mandatory arbitration clauses, which could eventually trickle down to all mortgage-related agreements with consumers, including those of title insurance and settlement providers.

# 2011 ALTA FEDERAL CONFERENCE

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March 13 - 16, 2011  
LIAISON HOTEL  
ON CAPITOL HILL  
WASHINGTON D.C.

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### HOEPA High-Cost Mortgages

The Mortgage Reform Act amends HOEPA and expands its coverage to include purchase money loans. Moreover, the law defines a high-cost mortgage to mean a consumer credit transaction that is secured by the consumer's principal dwelling, other than a reverse mortgage transaction, if the loan exceeds the following thresholds:

- For a first mortgage on a consumer's principal dwelling, the APR at consummation will exceed by more than 6.5 percentage points (or 8.5 percentage points, if the dwelling is personal property and the transaction is for less than \$50,000) the average prime offer rate for a comparable transaction; or
- For a subordinate or junior mortgage on the consumer's principal dwelling, the APR at consummation will exceed by more than 8.5 percentage points the average prime offer rate for a comparable transaction; or
- For a transaction of \$20,000 or more, the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed 5 percent of the total transaction amount; or
- For a transaction for less than \$20,000, the lesser of 8 percent of the total transaction amount or \$1,000 (or such other dollar amount as the Bureau sets); or
- The loan documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing, or those fees or penalties exceed, in the aggregate, 2 percent of the amount prepaid.

The law also amends those fees that must be included and those fees that may be excluded from the total points and fees calculation. These amendments, however, do not change the fact that title insurance charges paid to a lender's affiliate title company must be included in the total points and fees calculation to determine whether HOEPA thresholds are triggered.

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## ALTA Offers Suggestions to Simplify Mortgage Disclosure

Creating a new simplified combined mortgage disclosure will be the CFPB's top priority in 2011, and ALTA is engaged to once again provide crucial input.

Based on ALTA members' experiences in working with consumers when they purchase or refinance a home, ALTA wrote a letter to the Treasury and CFPB offering several suggestions as a new disclosure form is developed:

- **Disclosure of Loan Terms** – the third page of the current version of the HUD-1 Settlement Statement form includes additional disclosures of loan terms to the borrower. Drafters should consider whether an additional disclosure in this form is useful or possibly confusing when coupled with the new combined GFE/TILA disclosure.
- **Impact upon Tolerances** – RESPA imposes limitations on certain charges that the consumer can pay at the time of closing as they relate to the fees quoted at the time of the GFE. Non-compliance with the tolerance levels are the responsibility of the lender and are intended to provide consumers a more accurate estimate of their actual closing costs. Under existing regulations, settlement agents are required to determine, document and communicate tolerance compliance to the consumer. A new, combined GFE and TILA disclosure should improve tolerance definitions so that they can be more useful to both consumers and providers.
- **Consumer Shopping for Services** – the CFPB should continue HUD's policy of encouraging consumer shopping and consumer choice in loan and settlement services (a policy

ALTA strongly supports), and the combined disclosure form must not just permit shopping, but encourage it as well.

- **Disclosures Important to Consumers** – ALTA members find that most borrowers involved in either purchase or refinance transactions invariably have two questions: "How much is my monthly payment?" and "How much money will I need to close?" While important policy reasons may exist for other disclosures, the failure to answer these two basic questions hurts both consumers and providers.
- **Inclusion of Charges Normally Paid by Third Parties** – one of the most problematic features of the current disclosure forms is the disclosure of charges which the borrower will never pay, but are included in the disclosures and tolerance calculations as if they will be incurred by them. Inclusion of these items frequently confuses borrowers and leads to complicated "fixes" and credits to establish the appropriate financial outcome.
- **HUD-1 revision** – as the HUD-1 is closely tied to the GFE, drafters should consider whether a revision to all or part of the HUD-1 disclosure will be required in order to coordinate that disclosure with a new, combined GFE and TILA disclosure.

"We look forward to working with the CFPB to improving consumer disclosures in residential mortgage transactions," said Anne Anastasi, president of ALTA. "Based on our members' experiences in working with consumers when they purchase or refinance their home, ALTA provides a great knowledge bank that can help reduce frustration of



consumers. While transparency of fees is important, the disclosure forms must be understandable to consumers and give basic information including their monthly payment and how much money they need to bring to their closing."

Treasury Secretary Tim Geithner and Elizabeth Warren, assistant to the President and Special Advisor to the Treasury Secretary, earlier this year unveiled a draft of a new combined RESPA/TILA/GFE form.

This four-page sample was created by the Federal Reserve Board and HUD to facilitate a broader discussion about consumer testing of a variety of forms. This sample is not an official proposal from the agency. Expectations are that the new agency will create a new form consolidating TILA and RESPA, including the Good Faith Estimate form, by the July 2012 deadline set by law.

"ALTA's RESPA Implementation Task Force is going through this with a fine-tooth comb, with an eye toward being able to provide constructive input at future industry stakeholder meetings," said Dan Wold, chairman of the Task Force.

“Given that the Mortgage Reform Act lowers the points and fees trigger from 8 percent of the total loan amount to 5 percent, it may be possible that transactions involving affiliate mortgage and title insurance providers will more often qualify as high-cost mortgages under HOEPA,” Schulman said.

### Appraisal Provisions

Subtitle F to the Mortgage Reform Act contains provisions related to appraiser independence and enforcement, the use of broker price opinions, the pricing of appraisals, appraiser valuation model products, and the federal oversight of appraisal management companies (AMCs). The Home Valuation Code of Conduct was eliminated and the Bureau developed a new set of appraisal independence standards.

The Mortgage Reform Act amends Section 4 of RESPA to explicitly address the disclosure of AMC fees and appraisal fees on the HUD-1. Notably, Section 4 will permit the HUD-1 to include, in the case of an appraisal coordinated by an appraisal management company, a clear disclosure of (i) the fee paid directly to the appraiser by the appraisal management company; and (ii) the administration fee charged by such appraisal management company. This disclosure, however, does not appear to be mandatory, as the statute provides that the HUD-1 “may include” the separate itemization of these fees.

Schulman said settlement agents may begin receiving requests from mortgage lenders to separately disclose both the appraisal fee and the AMC fee on the HUD-1 in mortgage transactions.

### Servicing

The Mortgage Reform Act contains several provisions that impact the servicing of residential mortgage loans. Related to escrow accounts, the law amends TILA to require creditors to establish escrow accounts for certain first-lien mortgage loans for a minimum of five years. The law also requires creditors to disclose to consumers at least three days prior to closing that escrow accounts will be established. This disclosure must include the amount required at closing to fund the escrow account, the amount to be collected in the first year, the estimated monthly amount payable to escrow, and the consumer’s obligation to pay such items if the consumer chooses to terminate the account in the future. For those transactions where escrow accounts are not required, the law amends TILA to require disclosures to consumers advising them of their responsibilities of paying escrow items and the implications of non-payment.

### Conclusion

While the primary focus of the Dodd-Frank Act was not on the title insurance and settlement industries, the changes made by Congress will substantially impact a title company’s mortgage lender clients, Schulman said.

In addition, the kinds of mortgage products that will be offered in the future and the level of risk that lenders will be willing to incur as a result of these changes will affect a title company’s interaction with its lender clients and, ultimately, its title insurance and closing business.

“It is important for ALTA’s members to be aware of the breadth of changes coming to the residential

## Escrow Accounts

An escrow account would be mandatory at loan consummation if: (1) required by federal or state law; (2) a loan is made, guaranteed, or insured by a state or federal governmental lending or insuring agency; or (3) a first-lien loan has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set: (a) by 1.5 or more percentage points, in the case of a first-lien residential mortgage loan having an original principal obligation amount that is equal to or less than the Freddie Mac conforming loan amount for a residence of the applicable size, as of the date the interest rate is set; (b) by 2.5 or more percentage points, in the case of a first-lien residential mortgage loan having an original principal obligation amount that is more than the Freddie Mac conforming loan amount for a residence of the applicable size, as of the date the interest rate is set. This does not include reverse mortgages or open-end loans.

mortgage industry,” Pfothenhauer said. “Title insurance and closing providers who understand the challenges of their clients and anticipate the effects on their own business will be better prepared to navigate the new mortgage market.”



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# Health Care Reform: Tips on Selecting Coverage and How You will be Impacted

Because of the overhaul to the nation's health insurance system, ALTA has compiled useful information to help you select a provider, understand the changes and decipher how small businesses will be impacted.

**T**he Patient Protection and Affordable Care Act (PPACA) signed into law earlier this year by President Obama brings sweeping changes that will attempt to provide better health security by putting in place comprehensive health insurance reforms that hold insurance companies accountable, lower health care costs, guarantee more choice, and enhance the quality of care for all Americans.

The cost of health insurance for employees – by far the single most expensive benefit offered by employers – is one of the greatest challenges many small businesses face today. As business owners know, health insurance is a powerful tool for hiring and keeping the best workers.

Business owners are not required to offer health insurance to their employees. Small group health insurance provided by insurers is regulated at the state level. Federal law also mandates that an insurer cannot deny coverage to a small business due to the health conditions of its employees or their dependents (although insurers can consider this when setting rates). In addition, self-insured health plans (where an employer insures itself), are regulated by the federal ERISA (Employees Retirement Income Security Act of 1974) law. It is rare for a small company to self-insure its health insurance.

What kind of health insurance best fits your business?

Small businesses commonly offer several different types of health

insurance. Major medical plans typically cover a comprehensive array of health care needs, including doctor visits, prescription drugs and hospital care. These benefits can be delivered through several different types of plans:

**Managed care plans** – These plans offer a network of preferred health care providers. While those covered by the plan don't have to use these providers, they get better benefits if they stay in the network. A managed care plan might be labeled HMO, PPO or POS. A 2006 survey of U.S. small businesses with health insurance showed that more than 90 percent had a managed care plan.

**Hospital/surgical plans** – These plans are not “comprehensive” or “major medical” coverage, meaning they generally only cover hospitalization and surgery. They don't cover prescription drug costs, doctor's office visits and other services.

**Self-insured arrangements** – Your agent may suggest one of these arrangements for your business. By self-insuring, you collect premiums on a regular basis and use these funds to pay health-related claims filed by your employees.

**Limited mandate plans** – These plans do not offer some coverage that comprehensive plans are required by state law to offer, such as mammograms and colorectal screenings. This may result in a lower-cost plan. Some states allow small businesses to choose limited

## Health Care Reform Frequently Asked Questions

*What is the new small business tax credit and how do I know if I am eligible?*

The Small Business Tax Credit is available beginning with the 2010 Tax Year. Businesses with fewer than 25 full-time equivalent employees (FTE) and average annual wages less than \$50,000 per employee may qualify. To receive the tax credit, an employer must have a group health plan and must pay at least 50 percent of the premium.

The tax credit is equal to a percentage of what the employer pays and is based on the average premium in the small group market in the state. For tax years 2010 through 2013, the maximum credit in each year is 35 percent of the employer's contributions (25 percent for nonprofit employers). Beginning tax year 2014, the maximum credit is 50 percent of the employer's contribution (35 percent for nonprofit employers). The full 35 percent tax credit (50 percent in future years) is available for a business with 10 or fewer full time equivalent workers and average annual wages of \$25,000 or less. The tax credit phases out completely at 25 workers (FTEs) or average wages of \$50,000.

*I have five employees. Will I be required to provide insurance for my employees?*

No. The employer responsibilities under the health reform law do not apply to employers with fewer than 50 employees. However, you will be able to enroll your employees in coverage through the Exchanges beginning in 2014.

*I have 50 employees. Will I be required to provide insurance for my employees?*

Yes. An employer with 50 or more employees that fails to offer minimum essential coverage to its employees will be subject to a penalty of \$2,000 for each of their employees beyond the first 30. In your case, this penalty would be  $\$2,000 \times (50-30) = \$40,000$ . If an employee's share of the premium for coverage provided by an employer exceeds 9.5% of his or her household income, employers that do offer minimum essential coverage will be assessed a penalty of \$3,000 per employee that receives a subsidy through the Exchange. This penalty may not exceed \$2,000 times the number of employees beyond the first 30.

*I am self-employed. Will the new law impact my health insurance choices?*

Yes. Beginning Jan. 1, 2014, self-employed individuals and their families must be included in the small group market in all states and will have the option of purchasing coverage through the Exchange. This will increase plan choices and include the self-employed in a more stable pool.

*Will I be required to drop my current coverage?*

No. Group health plans in effect as of March 23, 2010, are grandfathered under the law and will be considered "qualified coverage" that meets the mandate to have health insurance that begins January 2014. Employees and dependents can be added to the policy without losing grandfather status.

*Must I go to the Exchange to purchase insurance, or can I continue to purchase coverage through my insurance agent?*

The federal law (PPACA) specifically states that businesses are not required to purchase through the small business Exchange.

*Can I continue to provide assistance to my employees through flexible spending accounts?*

Yes, nothing in the PPACA would eliminate or discourage these options.

**Source:** National Association of Insurance Commissioners



mandate plans if they currently have no coverage or if they cannot afford to maintain their current plan because of the price.

### Average Cost Premiums

The average premium for small group health insurance ranges from \$350-\$517 per month (\$4,200-\$6,200 per year) per employee and \$775-\$1,142 per month (\$9,300-\$13,700 annually) for family coverage, according to 2009 data from the federal government.

### Deductibles

- For PPO plans, individual deductibles averaged \$849 with annual out-of-pocket limits of \$2,700 and co-payments of \$21 for in-network physician visits.
- HSA plans had an average deductible of approximately \$2,220 and average annual out-of-pocket limits of approximately \$2,800.
- The deductible data comes from a 2006 survey by America's Health Insurance Plans, the association of health insurance companies. AHIP surveyed 21 of its member insurers that offer coverage to more than 650,000 small groups (defined as firms with 2-50 employees) that employ 4 million workers and their 3.2 million dependents. For more information, visit [www.ahip.org](http://www.ahip.org) or [www.statehealthfacts.org](http://www.statehealthfacts.org).

### Shopping for Health Insurance

- Before purchasing, interview several licensed insurance agents who specialize in serving the health insurance needs of small businesses.
- Shop around: compare the costs of equivalent coverage from several
- Ask about premium cost increases over the past five years.
- Talk to other small business owners to find out about their experiences with different kinds of health plans and insurers.

## Hidden Costs of 1099 Tax Provisions Remain in Health Care Bill

While there remains a push to repeal the health care reform, one of the hidden costs in the bill is found in Section 9006, which places an unprecedented burden on small business reporting and paper work requirements.

The Patient Protection and Affordable Care Act (PPACA) includes a provision that requires businesses to file 1099 tax returns in 2012 for many purchases. Starting in 2012, these entities will have to keep track of all non-credit card purchases made from a business, by the business tax ID number. This is providing that the entities' purchases from the business will total more than \$600 for that calendar year.

The following year the entity will have to file a Form 1099-MISC with the IRS and send a copy to the business with the total purchased for the calendar year from that business, the business name, address, and tax ID number.

The new law lifts the exemption for purchases from corporations and expands the requirement to include property (goods) as well as services.

Other important provisions include:

- A six-fold increase in penalties from \$250,000 to 1.5 million. (H.R.4213, H.R.4849)
- A doubling of penalties per record from \$50 to \$100. (H.R.4213, H.R.4849). This provision could prove expensive for the title and settlement services industry. Companies will now be fined double for every incorrect 1099, resulting from a seller providing incorrect information on the 1099 or a typographical error.

Early indications reveal that these changes will likely cause the 1099 reporting volume to increase significantly for most companies as well as the associated B-Notices.

While the law applies to payments made after Dec. 31, 2011, companies need to make broad changes to:

1. W-9 procedures to include all vendors.
2. Solicit W-9's for corporate vendors.
3. Prepare for larger 1099 year-end printing, mailing, and filing.
4. Make the appropriate budgetary and system updates to accommodate these changes.

insurers to be sure you're getting the best deal.

- Ask lots of questions before you decide on a health plan. If you fail to get the answers you need from one agent or insurer, contact others.
- Before selecting a health plan, it's a good idea to survey your employees to find out what kind of coverage is particularly important to them.

- Know your employees. For example, if a number of your employees are young and married, they may want to have children. Pregnancy-related coverage will likely be extremely important to them. Other companies may have mostly young employees who rarely see a doctor.
- Remember, small business group health plans are not standardized, and benefits may vary greatly from one plan to another. In some states, group health insurance must cover childhood immunizations, mammograms, pap smears, prostate and colorectal screening.

Understand the factors that affect your premium costs.

Some states allow insurers to calculate premium rates based on age, sex, industry, geographic location, family composition and overall health of the group.

Some cost factors are clearly outside of your control. Other cost factors can be managed, such as:

- The type of health plan you select. For example, HMOs are typically less expensive than PPOs; both are less expensive than indemnity plans.

- The specific benefits you select. For example, choosing higher deductibles, co-payments and maximum out-of-pocket limits can lower monthly premiums. On the other hand, choosing lower lifetime medical limits can lower premiums.

## The cost of health insurance for employees, by far the single most expensive benefit offered by employers, is one of the greatest challenges many small businesses face today.

- The costs you transfer to your employees. Most small businesses ask their employees to bear a portion of the cost of their health insurance premiums. While this doesn't affect the premium charged by the insurer, it does affect the amount the employer pays.

### Other Suggestions

#### Know Your Rights

Small group health plans are typically required to treat all of your eligible employees (generally full- or part-time employees who work at least 30 hours a week) equally and may not

discriminate against those who are ill or become ill.

Small employer plans can exclude coverage for pre-existing conditions for up to 12 months after an employee's enrollment date.

Explore joining a trade association for small businesses in your industry operating in your state.

By joining a trade association, you may be able to join a larger group, which may offer a more affordable plan than you could purchase on your own.

Some states allow small and large businesses to pool together to purchase health insurance for their employees, but the plans must be underwritten and rated as a single employer, uphold a uniform health plan design, guarantee issuance to all members and comply with all other federal and state insurance requirements.



### Consider Individual Health Insurance

Many insurance companies offer individual health insurance policies. You should compare several policies with comparable benefits to see which you prefer.

You may be able to get more affordable individual health coverage through a trade association or small business organization in your state.

### Consider Tax-protected Accounts for Your Employees

These accounts include flexible spending arrangements (FSA – cafeteria plans), health savings accounts (HSA) and health reimbursement accounts (HRA).

Do some other research on the insurer and agent. Cost is not the only important factor.

Check to verify that both your agent and the insurance company are licensed. You can do this online or by calling your state's insurance consumer hotline. (Some agents work for one insurance company, while others are independent and can sell policies from several different companies.) Look into the complaint history of the insurer you're considering.

### Understand COBRA and Other Federal Regulations for Small Employers Offering Health Plans.

Under federal and state law, employers that have a group health plan are required to offer their employees (and their dependents) the option of continuing their membership in the group plan at their own expense after they leave their job. Employees who choose this option are said to “elect COBRA.”

Some states require an insurer to alert terminated employees with a

## New Tax for High-Income Households

The health bill also included a provision that imposes a new 3.8 percent Medicare tax for some high-income households that have “net investment income.” Any revenue collected by the tax is dedicated to the Medicare hospital insurance program.

This new tax applies only to households with Adjusted Gross Income (AGI) of more than \$200,000 for individuals or more than \$250,000 for married couples. Since capital gains are included in the definition of net investment income, an additional tax obligation might result from the sale of real property.

Even if the AGI limits are met, the new tax would not be applied to capital gains that result from the sale of a home, since the existing home sale capital gains exclusion rule still applies – \$250,000 (individual)/\$500,000 (couple). So if the gain from the sale of the primary residence is below that amount, then NO Medicare tax will have to be paid on the gain. The new Medicare tax would apply only to a home sale gain realized in excess of the \$250K/\$500K that pushes the filer's AGI over the \$200K/\$250K income limits.

#### Some other quick points:

- The new Medicare tax will take effect Jan. 1, 2013.
- The legislation makes no changes to the mortgage interest deduction.

written notice that specifies the date on which their employee benefits will be canceled and the employee's rights to elect COBRA.

Federal COBRA law governs employers with 20 or more employees, while state “mini-COBRA” law governs employers with fewer than 20. The laws are identical.

### Take Advantage of the Tax Benefits Available to Your Company.

Businesses can generally deduct the premiums they pay to health plans for their employees. Discuss this with your accountant.

Beware of “alternative” types of health insurance – or outright fakes.

### Medical Discount Plans are Not Insurance

These plans claim to offer discounts for members who use certain doctors, pharmacies and hospitals. Verify these claims with those providers before buying. While these plans are not insurance, they are regulated by your department of insurance.

### Bogus Health Plans

You may see ads on late-night TV, in spam or in junk faxes offering “unbeatable” low prices on group health coverage. Many of these are unlicensed, illegal operations. You can find out with a quick phone call to your department. As with most products, if a deal sounds too good to be true, it probably is.



# Foreclosure Mess Provides ALTA Perfect Opportunity to Trumpet Value of Title Insurance

We've all heard the phrase "when you're given lemons, make lemonade." Well, ALTA has used the robo-signer and foreclosure mess to share the industry's value proposition on several fronts.

Whether it's been Congressional hearings, participating on industry radio shows and webinars, or providing input to newspapers and magazines across the country, ALTA has been fully engaged in sharing how title insurance protects consumers, lenders and investors, while helping the United States tap the wealth locked in the ownership of property because the system allows people to use their property as collateral and obtain credit.

"While this was not the most fortunate backdrop, the foreclosure freeze caused many people to ask questions about the importance of title insurance," said Kurt Pfotenhauer, CEO of ALTA. "The suggested nightmare scenario that homeowners who bought homes in good faith would lose their homes

turned the spotlight to the title industry. We were ready with our message, actively discussed the necessity of title insurance and will continue defending the industry as this story unfolds."

## Media Coverage

When the initial robo-signer reports started hitting the streets, ALTA jumped at the opportunity to bring certainty back to the market and rebut the inaccurate articles. In early October, Pfotenhauer appeared on CNBC saying the robo-signing scandal would not result in adverse claims for the title industry. Before, during and after the Annual Convention, ALTA received a barrage of phone calls as the media inquired about how the industry would be impacted, the process involved in producing a policy and the protection it provides.

"An owner's policy provides assurance that your title company will stand behind you if a covered title problem arises after you buy your home," Pfotenhauer has told media outlets across the country, including The Wall Street Journal, New York





Times, Washington Post, Bankrate, Reuters and Bloomberg. “The bottom line is that your title company will be there to pay valid claims and cover the costs of defending an attack on your title.

“No matter the type of purchase, but especially a foreclosure, it is important that all documentation is in order. Commitment to accuracy and quality assurance is the foundation of title insurance. This commitment ensures fewer problems for homeowners and provides assurance that they won’t lose their investment.”

### Industry Radio Shows, Webinars

ALTA also took advantage of several opportunities to educate referral partners. Pfothenauer and Steve Gottheim, ALTA’s regulatory and legislative counsel, were invited to participate on programs offering insight into how the title industry was being impacted by the foreclosure situation.

Pfothenauer participated on the Norris Group Real Estate Radio show with host Bruce Norris, a 30-year industry veteran having been an appraiser, builder, Realtor and investor. Based in Southern California, the Norris Group’s radio show has a large following of Realtors and investors, as well as a large following online with each show getting downloaded 1,500 times per episode. Past participants of the award-winning show include leaders from Fannie Mae, Freddie Mac, the Mortgage Bankers Association and the FBI.

Norris led off the show saying how the country learned a lesson in the value of title insurance and that nothing in real estate moves without a title policy.

“The second something works really well, you are in danger of taking it for granted,” Pfothenauer said. “The second there is a threat, people start asking, ‘what happened

in place, a whole market can come to a halt,” he continued.

Norris said he had heard of several cases where a trustee sale buyer bought a property at the courthouse steps, fixed the house, and then was sued for quiet title actions. If those people had owner’s policies, they would be protected.

“There would have been due diligence done to discover any flaws or potential claims. The real benefit of this insurance is piece of mind because you can be certain that what you have is yours. You know that someone has done a thorough job establishing that, and in the unlikely case it’s challenged you have someone there to handle the claim.”

Gottheim participated on a webinar produced by NAR, which explained some of the title and other issues that could come into play for Realtors working with a buyer of a foreclosed property, listing foreclosed properties, or operating in a market

■ “People do not realize that in the United States, private property is exchanged by private contract. The government doesn’t issue a title.”

to the lights? They used to turn on every time I hit the switch’.”

“People do not realize that in the United States private property is exchanged by private contract. The government doesn’t issue a title. When you transfer property, you must have someone to certify that transaction and record it in the public record. If you don’t have this system

with a large percentage of foreclosed properties for sale.

Gottheim explained the difference between a lender’s and owner’s policy, the process to produce a policy, the difference between judicial and non-judicial foreclosures, how title companies handle foreclosure transactions, and he suggested

Realtors encourage their clients to purchase an owner's policy.

Offering advice about title insurance, Gottheim said Realtors should talk with local title agents who know the properties the best and ask them about the risks.

"Realtors should ask if there will be properties in an area that are not insurable," he added. "That will give a Realtor a good sense if they need to adjust their market practices. If a Realtor is in an area with a lot of foreclosures, they may want to order a title search to get early assurance that a property will be insurable."

### Congressional Testimony

ALTA also took the industry message to Capitol Hill, as ALTA President Anne Anastasi testified at a hearing of the House Subcommittee on Housing and Community Opportunity titled "Robo-Signing, Chain of Title, Loss Mitigation and Other Issues in Mortgage Servicing."

The hearing focused on the foreclosure process and allegations of poor documentation and other procedural irregularities that have received extensive scrutiny

from federal regulatory and law enforcement agencies.

Anastasi provided input on the U.S. real property transfer system, the benefits of this system and what documents are recorded in the public record.

"As we question the validity and credibility of the foreclosure process and wonder how it affects title to property, we can be assured that if a consumer purchases an owner's title insurance policy, they will be protected," Anastasi said.

In addressing how foreclosures impact the title process, Anastasi said the presence of a foreclosure in the chain of title does not alter the title industry's duty to provide title assurance to parties involved in the transaction.

"However, the ability of the industry to provide that assurance becomes more challenging when the credibility of the foreclosure process is damaged by process and documentation deficiencies," she said.

Anastasi shared the message that allegations of affidavit issues, robo-signing, notary irregularities, or incorrectly endorsed or assigned

promissory notes are serious, but stakeholders can work together to resolve any uncertainty and restore credibility to the system equitably.

"The title industry has no way to discover foreclosure irregularities that are not included in court proceedings or documented in the public record," she said. "As such, unlike the curative work to correct errors in the public record that occurs before a title insurance policy is issued, the title insurer or agent cannot cure foreclosure defects."

Defects in the foreclosure process, while underpinning the documents that are on the record, are in fact similar to other off-record title defects in that they cannot be discerned until someone appears before a court and challenges title after the policy is issued. Therefore it is impossible to eliminate the defect. Each title insurer must decide whether to exclude foreclosure problems from coverage or insure over them.

ALTA also was asked by the Congressional Oversight Panel to give insight and answer questions about the foreclosure situation. The Congressional Oversight Panel was once headed by Professor Elizabeth Warren, who has been tasked by President Obama with setting up the new Consumer Financial Protection Bureau, and was created in 2008 to oversee TARP and "review the current state of financial markets and the regulatory system."

"These were perfect opportunities to engage decision makers and explain the title industry's role in the real estate transaction," Pfothenauer said. "We will be eager to serve as a resource to help restore confidence in the housing market."



▲ ALTA President Anne Anastasi testifies before the House Subcommittee on Housing and Community Opportunity.

## Suspicious Fraud Activity Up 4 percent in 2009, Financial Crimes Enforcement Network Reports

The Financial Crimes Enforcement Network (FinCEN) released its 2009 Mortgage Loan Fraud (MLF) study which found the number of mortgage fraud suspicious activity reports (SARs) filed in 2009 grew 4 percent from 2008. FinCEN also reported that just looking at the fourth quarter of 2009, mortgage fraud SAR filings increased 6 percent over the same period in 2008.

Consistent with recent years, 9 percent of all SARs filed in 2009 indicated MLF as an activity characterization. However, looking at just the fourth quarter, this

proportion rose to 11 percent.

In addition to the increase in SAR MLF filings, the analysis shows an increase in the prevalence of post origination loan reviews by a variety of mortgage market businesses other than mortgage lenders. Mortgage loan purchasers and providers of mortgage insurance, certificate insurance, or similar credit enhancement have taken an increasing role in detecting potential fraud or misrepresentations. According to the report, more than 80 percent of MLF SARs involved transactions or attempted transactions for amounts under \$500,000.

California and Florida remained the most common subject state locations. At the county level, Los Angeles and Miami-Dade had the most subjects, followed by Cook and Maricopa

counties. Filers reported, in order, the greater Los Angeles, Miami, New York, Chicago, and Riverside areas as the top Metropolitan Statistical Area (MSA) locations of MLF SAR subjects.

Mortgage Loan Fraud SAR Subjects Description Reported by Filers	CY 2009
Real Estate Services Professional <i>(Loan officer, mortgage broker, realtor, or employee of any)</i>	12,318
Applicant, Borrower, Buyer, Beneficiary	3,459
Seller	2,759
Real Estate Closing Professional <i>(Title agent, escrow company, attorney, etc.)</i>	1,346
Verifier of loan documentation <i>(Notary, employer, tax preparer, landlord, etc.)</i>	1,270
Real Estate Builder, Developer, Property Manager, Investor, Investment Company	710
Appraiser	531
Loan Modification Scammer	114

Top Metropolitan Statistical Areas Based on Suspicious Fraud Activity Reports		2009	2009 Q4
1	Los Angeles-Long Beach-Santa Ana, CA:	10,656	3,103
2	Miami-Fort Lauderdale-Pompano Beach, FL:	10,089	3,003
3	New York-Northern New Jersey-Long Island, NY-NJ-PA:	7,214	2,165
4	Chicago-Naperville-Joliet, IL-IN-WI:	5,552	1,591
5	Riverside-San Bernardino-Ontario, CA:	3,643	1,024
6	Washington-Arlington-Alexandria, DC-VA-MD-WV:	3,538	877
7	Phoenix-Mesa-Scottsdale, AZ:	3,500	1,051
8	Atlanta-Sandy Springs-Marietta, GA:	3,476	875
9	San Francisco-Oakland-Fremont, CA:	3,068	831
10	Detroit-Warren-Livonia, MI:	2,712	663

## Michigan Land Title Association Enhances Participation with Habitat for Humanity

The Michigan Land Title Association is proud to announce the commencement of its alliance with Habitat for Humanity Michigan. While many MLTA members have been long time supporters of their local Habitat affiliate, the MLTA recognized the opportunity to increase and enhance MLTA member participation.

The goal of this program is to increase Habitat for Humanity volunteerism among MLTA's membership base by presenting MLTA members with multiple and varied volunteer service options, including: fundraising drives, material donations, habitat home build participation; and affiliate board member opportunities. To enhance the members' volunteer experience, MLTA Habitat for Humanity committee members serve as liaisons between the member participant and their local Habitat affiliate. Committee member duties include: soliciting member participation; facilitating member – affiliate introductions; monitoring member

participation to ensure member expectations are met; and promoting MLTA member participation in the member's community and throughout the MLTA membership base.

Habitat for Humanity of Michigan's long standing commitment to helping its neighbors in need fueled the MLTA's desire to take action. Doug McFarlane, MLTA past president, channeled this desire into a working plan of action.

MLTA's current president, Tim McDonnell, is committed to carrying out this plan by utilizing the association's influence and resources, to make certain that all parties, most especially Habitat for Humanity affiliates and Habitat homeowners, benefit from MLTA involvement.

If you would like to share information about your state association's involvement with Habitat for Humanity, or any other volunteering effort, send an email to Jeremy Yohe at [jyobe@alta.org](mailto:jyobe@alta.org).



▲ MLTA President Tim McDonnell presents a \$2,000 donation to Ginny Noble, volunteer coordinator for Habitat for Humanity – Lansing, as the MLTA executive board awaits an afternoon of hard, but rewarding work.

## First American Purchases Minnesota-based Tech Company

First American Financial Corp. announced the acquisition of NAZCA Solutions Inc., a Minnesota-based company founded in 2003 that leverages Web technology to aggregate disparate property datasets from multiple internal and external sources.

With the acquisition of NAZCA, First American said it will increase its ability to access and assemble property-related information, such as ownership, mortgage and tax data from unrelated databases in real time. The NAZCA brand will remain intact and will become part of First American's Database Services Group.

The technology acquired in the NAZCA transaction allows First American to accelerate its plan to rapidly expand title plants geographically. NAZCA will continue to market its two core products: NAZCA Online and Managed Services. NAZCA Online offers advanced search mechanisms to allow the user to gather property search data from the NAZCA browser-based platform. NAZCA Managed Services includes complete property reports, legal and vesting and custom data solutions compiled and reviewed by experienced examiners.

### First American Smart Phone App Supplies Property Data

First American Title Insurance Co. announced that its AgentFirst mobile application for Android and BlackBerry smartphones is now available for free download.

The AgentFirst mobile application, which was previously released for iPhone in April 2010 for download at no charge through the iTunes App Store, provides real estate and lending professionals access to property and ownership information



*First American*

which covers 97 percent of all U.S. real estate transactions.

Users with active AgentFirst accounts on their mobile device can easily look up property addresses while in the field and gain access to property information, transaction history and tax data. In addition, the new mobile application allows agents to place title and escrow orders directly through their mobile device.

### Data Trace Unveils New Product

Data Trace Information Services LLC, a provider of data services to the settlement services industry, released its next-generation automation product, Title IQ. This new product provides users with the ability to order automated title products directly from Data Trace's web site, [eDataTrace.com](http://eDataTrace.com), or through an integrated Web service directly connected to the user's own production system.

Title IQ offers three levels of service to choose from: an automated search package including plant data and images,

an automated data extraction service and a core examined product. Title IQ combines data from unique proprietary sources and Data Trace's exclusive geographic title plants and applies flexible and customizable business rules to create complete streamlined refinance and equity products, preliminary reports and title commitments tailored to each user's preferences. Title IQ is currently available in the states of Arizona, California and Florida, and will soon be available in all 23 states where Data Trace provides coverage.

### Michigan Title Company Makes Acquisition

Farmington Hills, Mich.-based Attorneys Title Agency (ATA), a full-service title company providing services throughout the state of Michigan, acquired the assets of Mt. Clemens, Mich.-based Philip F. Greco Title Company and merged them into the newly formed Greco Title Agency.

The transaction, which closed on Oct. 29, marries ATA's strong financial backing, technology and vertically integrated service model with Greco Title's reputation, strong brand recognition

and customer loyalty. Through the agreement, ATA will experience significant business opportunities throughout metropolitan Detroit. By joining forces with ATA, Greco Title will have access to the company's robust foreclosure and REO clientele, as well as significant administrative efficiencies.

Greco Title will continue to operate in and expand throughout southeastern Michigan. The combined ATA entity will have 25 office locations and more than 450 employees.

### TSS Software Introduces Four New Solutions

TSS Software Corp. announced the release of four flexible solutions under its flagship closing and settlement software, TitleExpress. New TSS customers may now select among four solutions that offer only the features they want and need. The new options include a HUD-1 solution (HUD-1), a

title documents solution (Production), a complete title and closing solution (Professional), and a fully integrated title and closing solution (Enterprise). The Enterprise solution also includes document scanning, custom management reporting, and online transaction management.

### Title Company Launches Online Library of Co-Op, Condo Offering Plans

Manhattan-based TitleVest announced the BETA launch of the first digital library of thousands of New York cooperative and condominium

offering plans. This new keyword-searchable service offers a centralized source for obtaining and viewing coop and condo offering plans.

## New GFE Led to Accurate Fee Disclosures, Price Increases Exaggerated, Survey Shows

Fees disclosed on the new good faith estimate reflect a more accurate disclosure of fees and has not resulted in an increase of mortgage fees, according to a survey conducted by Ernst Publishing Co.

“The perception that the fees for county recordings, appraisals, credit reports and so forth have increased dramatically as a result of the good faith estimate is simply not correct,” said Jan Dalton Clark, vice president of marketing and sales for Ernst. “The GFEs provide accurate prices and those prices have remained flat or experienced increases in the low single digits.”

Ernst provided results from its “Ernst Good Faith Estimate” survey, which reflected the views of 226 respondents from lending institutions that were polled from Oct. 11-Oct.16. Ernst has been the leading authority on land recording requirements for almost two decades, processing more than 120,000,000 transactions annually.

According to the survey, 57.5 percent of respondents reported county recording fees had increased 5 percent or less over the past 12 months.

In fact, more than 50 percent of respondents noted that vendor controlled fees, such as appraisal, credit reports, title searches and so forth, had also increased 5 percent or less over the same time period. In addition, 51.4 percent reported that lender controlled fees increased 5 percent or less over the past 12 months.

“There is a perception in the mortgage industry that the costs had risen a hefty 35 percent, but that is simply not the case, as our research indicates,” said Clark.

According to the survey, the reason for the confusion over fees is that the prices that appear on the good faith estimate are precise — and not understated as they were in the past — so some people assumed the higher prices reflected increases in the cost of fees.

Ernst’s research, however, shows that is not what has occurred.

“Forty-five percent of survey participants thought that the recently reported double-digit increase in closing costs that are reflected on the GFE are the result of more accurate reporting

of the total funds needed to close a loan,” said Gregory E. Teal, president and CEO of Ernst. In contrast, just 36.8 percent of survey participants thought that the prices reflected increases in closing costs.

## RamQuest iPhone App Provides Access to Closing Information

RamQuest Software Inc. announced the availability of its new iPhone app, Closing Market Mobile. This new mobile communication tool enables on-the-go access to key information related to a real estate closing transaction.

RamQuest’s Closing Market Mobile gives access to pertinent transaction information through an iPhone mobile device. With the Closing Market Mobile app, RamQuest customers can view information and collaborate with any other company on RamQuest’s Closing Market network. Additionally, Closing Market Mobile gives Title and Settlement providers, Realtors, Mortgage Lenders, Mortgage Brokers, Buyers, and Sellers instant access to files – in

“The benefit of the GFE to all parties involved in a real estate transaction is that there can be more confidence in the estimates that are provided, and that’s good for our industry,” Teal said.

real-time, 24/7, anytime or anywhere – and all from the convenience of an iPhone. Key features of RamQuest’s Closing Market Mobile communication tool include:

- Visibility of all orders across multiple title companies
- Ability to check order status
- Ability to view order details
- Capability to monitor and submit order notes
- Capability to view documents
- One click call or email for key contacts on an order
- Ability to map a property on the order



### WFG Title Taps Industry Veteran to Head Agency Services Division

WFG National Title Insurance Co. named Joe Drum as an executive vice president. Based in Santa Barbara, Calif., he will be responsible for leading the company's agent services program. WFG Title is currently licensed in 33 states. Drum has an extensive settlement services leadership background, having held executive positions focused on agent services with

several of the industry's largest title insurance companies during his 35 year career. He was most recently president of United General Title Insurance Co., where he oversaw all agency operations and strategic initiatives for several brands. Before that, he was an EVP with First American Title Insurance Co. and Fidelity National Title Insurance Co.

### Stewart National Title Services Bolsters Underwriter Ranks

Stewart National Title Services announced the addition of Barry S. Smith as vice president and associate senior underwriter in its Houston office. Smith brings a wealth of knowledge in and understanding of the commercial real estate industry. With more than 25 years of experience,

Smith has held national commercial underwriting positions with both First American Title Insurance Co. and Fidelity National Title Insurance Co. In those capacities, he served as lead counsel on a number of significant multi-site, multi-state portfolio transactions.

### Stewart Global Solutions Announces Executive Promotion

Stewart Global Solutions, a division of PropertyInfo Corporation, a Stewart company, has announced the promotion of Jill Urban-Karr to executive vice president. Urban-Karr handles market development activities in Africa, the Middle East,

the Caucuses and Eastern Europe and brings more than 13 years experience to the position. She began her career at Stewart with Landata Geo Services, known today as Stewart Geo Technologies Inc., and then joined Stewart Global Solutions.

### Stewart Names Division President for Nevada; Opens D.C. Office

Stewart Title named James Bennett division president for Nevada, while also announcing the opening of its new Washington, D.C., location in the Friendship Heights/Chevy Chase neighborhood.

In Las Vegas, Bennett will be responsible for overseeing the Las Vegas, Elko, Ely, Carson City and Reno offices of Stewart Title. Bennett joins Stewart Title from Chicago Title, where he served as president of

Nevada operations. He has more than 40 years of industry experience.

The D.C. office will be managed by John W. Gilbert and cater to the D.C., Virginia and Maryland real estate markets. Gilbert joined Stewart in April 2010. Previously, Gilbert was a partner in the law firm, Modell and Gilbert LLC, in Bethesda, Md., and brings more than 15 years of real estate experience to the table.

### Agents National Expands into Wyoming, Announces New Hires

On the heels of expanding into South Dakota, Missouri-based Agents National Title Insurance Company (ANTIC) announced it is now licensed to issue title insurance in Wyoming.

ANTIC is also licensed to operate in Arkansas, Indiana, Kansas, Missouri and Mississippi. Nearly \$27 million in premium was written in Wyoming in 2009.

To accommodate its growth, ANTIC announced the addition of Pierce Curran as the underwriter's Arkansas agency manager and Brian Blackman to its underwriting staff.

Curran graduated from Pittsburgh State University with a degree in Marketing and Management. Prior to joining ANTIC, he worked in the title industry in his family's abstract company and in the oil and gas industry doing mineral rights work.

Blackman will oversee underwriting for the company's southern region, focusing on the Arkansas and Mississippi markets. He received his Bachelor of Science in Business Administration from Arkansas State University and his Juris Doctorate from the University of Arkansas at Fayetteville School of Law.



## new members

### ARIZONA

Adam Driggs  
**Driggs Title Agency, Inc.**  
*Scottsdale*

### FLORIDA

Rashmi Airan-Pace  
**Rashmi Airan-Pace, P.A.**  
*Miami*

Dave Dettmann  
**Title Edge LLC**  
*Fort Myers*

### ILLINOIS

Ed Claffy  
**Thompson Flanagan**  
*Chicago*

### NORTH CAROLINA

John Starling  
**Priority Title Insurance Agency**  
*Wilmington*

### NEW JERSEY

Scott Rutkay  
**Modern Title LLC**  
*Millburn*

Rose Mary Piersanti  
**Shore Title Agency, Inc.**  
*Sea Isle City*

### NEW YORK

Robert McManus  
**Aztec Abstract, LLC**  
*Warwick*

### OHIO

Shannon Moore  
**Omega Title, LLC**  
*Stow*

### TENNESSEE

Michael Hewgley  
**Mid South Title Services**  
*Memphis*

### TEXAS

Ben Murphy  
**Bridge Title Company, LLC**  
*Dallas*

Christina Hopson  
**County Land Titles**  
*Lampasas*

Greg Wessels  
**Countywide Title**  
*Blanco*

### TEXAS CONT.

R. Gooding  
**Gooding Title Company**  
*Clarksville*

Phil Vanderpool  
**Great Plains Abstract & Title Co.**  
*Pampa*

Tracey Mahoney  
**Grimes County Title, Inc.**  
*Navasota*

Gary Farmer  
**Heritage Title Company Of Austin, Inc.**  
*Austin*

Elizabeth Whitley  
**Irion County Abstract Company, Inc.**  
*Mertzon*

J.M. Catlin  
**Kaufman County Title & Abstract Co.**  
*Kaufman*

Michael Krueger  
**Kingsville Title Services**  
*Kingsville*

Harris Kerr  
**Permian Abstract Company**  
*Midland*

Greg Nix  
**Priority One Title, LLC**  
*Houston*

Tami Neal  
**Sabine Abstract & Title Company**  
*Hemphill*

Rebecca Steiner  
**Security Land Title Co.**  
*Mcallen*

Norma Sharp  
**Stroman Abstract & Title Co.**  
*San Angelo*

Michelle Necaise  
**Title Network, Ltd.**  
*Lewisville*

George Lemon  
**Tri-County Title, LLC**  
*Winnsboro*

Judi Gates  
**Trinity Valley Title**  
*Athens*

### VIRGINIA

Dondria Holsinger  
**Shenandoah Title Agency, Inc.**  
*Harrisonburg*

Jennifer Dantine  
**Title Title & Escrow, LLC**  
*Arlington*

Theresa Ganshaw  
**Twilight Title, LLC**  
*Carrollton*

## Associate Members

### ALASKA

Jeffery Troutt  
**Law Office of Jeffery Troutt**  
*Douglas*

### CALIFORNIA

Dennis Evans  
**CentRealTech, Inc**  
*El Dorado Hills*

### LOUISIANA

Robin Woods  
**IntegriSite**  
*West Monroe*

### TEXAS

Anil Adoni  
**Imersion Global, Inc.**  
*The Woodlands*

Kristy Parsons  
**Residential Services, LP**  
*Houston*

Jen Gabbert  
**Workway**  
*Richardson*

## Become an ALTA Member

Being an ALTA member comes with many benefits, among them include free access to policy forms, the latest news impacting the industry, training programs and discounts to professional resources.



# Be Heard: Help Us Influence the Decision Makers

“Laws are like sausage, it is better to not see them being made”  
– Otto von Bismarck, German Chancellor

While this thought may be as true today as it was in 19th century Germany, our industry’s visibility in the legislative process is critical in today’s politically charged law-making environment. We must not be bystanders awaiting the results of the process. Massive and highly complex legislative change is being proposed in the name of consumer protection and financial reform that will have long-term impact on the settlement services and title insurance industries. The Dodd-Frank Wall Street Reform and Consumer Protection Act, the morphing role of Freddie Mac and Fannie Mae in the settlement service industry and the legislative turnover of November’s mid-term elections are just examples of issues that make this year’s ALTA Federal Conference a critical event that all members should plan to attend.



Your attendance at the ALTA Federal Conference helps accomplish the following critical objectives:

1. *Informs you of the impact current and pending legislative activity may have on your business;*
2. *Introduces you to your Congressional representatives and their roles in the legislative process;*
3. *Makes sure your Congressional representatives understand your stake in the outcome of pending policies; and perhaps most importantly*
4. *Provides continued vitality to ALTA as the title insurance and settlement services industry’s preeminent industry advocate.*

2011 is a pivotal year to have our collective voice heard. The new Congress will have 110 new faces when it is seated for its first session in January. These new lawmakers will be participating in committee and floor votes that will shape the direction of pending legislation. Many of these newly elected officials, as well as some of their more experienced colleagues, are not familiar with the issues facing our industry today, or more importantly, the value we bring to this critical segment of the U.S. economy.

Make plans to attend this year’s ALTA Federal Conference. The Federal Conference is the single best opportunity to have your voice heard on the issues most important to our industry. The more constructive influence we have as an industry to the legislation that will impact us for years to come, the better positioned we will be to continue to provide the value that our customers have come to expect. I hope to see you there.

Rob Chapman

ALTA Board of Governors, chairman of the Underwriters Section Executive Committee



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**Erin Wagner**  
Vice President &  
Senior Relationship Manager  
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**Brad Kirk**  
Vice President &  
Senior Relationship Manager  
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**Kenny Hanks**  
Vice President &  
Senior Relationship Manager  
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**Julia Sherouse**  
Assistant Relationship Manager  
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Source: 2009 Ernst & Young Cash Management Survey, based on fee-equivalent revenue.



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