March 2011

TitleNews

Official Publication of the
American Land Title Association

Armed with the Right Technology?

Web-based software systems and a slew of other technology advances provide tools to remain competitive and profitable.

MAY 8 – 10, 2011 | THE COSMOPOLITAN OF LAS VEGAS | LAS VEGAS, NV

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CE and CLE credits will be available for most sessions.

HOTEL

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AMERICAN LAND TITLE ASSOCIATION

Go to *www.alta.org/meetings* to register.

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April 10	Agents & Abstracters Forum *Minneapolis, MN*
May 8	Agents & Abstracters Forum *Las Vegas, NV*
May 8 – 10	2011 Business Strategies Conference The Cosmopolitan *Las Vegas, NV*
September 18	Agents & Abstracters Forum *Baltimore, MD*
October 12 - 15	2011 ALTA Annual Convention Charleston Place *Charleston, SC*

STATE CONVENTIONS

April 6 - 7	Tennessee
April 14 - 16	Oklahoma
May 1 - 3	Iowa
May 5 - 7	New Mexico
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May 22 - 24	New Jersey
May 22 - 24	Pennsylvania
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June 23 - 26	New England *(CT, ME, MA, NH, RI, VT)*
July 7 - 10	Pacific Northwest *(ID, MT, OR, UT, WA)*
July 18 - 20	Michigan
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August 4 - 6	Kansas
August 11 - 12	Minnesota

TitleNews

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AMERICAN LAND TITLE ASSOCIATION

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Lessons Learned in The Big Easy as Industry Helps Save the Day

With the festivities of Mardi Gras having just concluded, a few beads should have been tossed the title insurance industry's way to recognize its effort in New Orleans to help recover vital mortgage and conveyance records that were lost after a computer crash.

The computer system that housed the servers for the Orleans Parish Mortgage and Conveyance records crashed Oct. 26, 2010, taking with it 23 years or so of data. For nearly three months, real estate transactions ground to a halt. A few in the area coined it the Katrina of computer crashes.

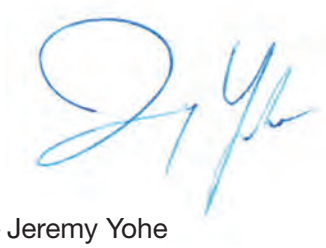
However, the title insurance industry came to the rescue as the New Orleans Metropolitan Association of Title Attorneys (NOMATA), a regional organization of the Louisiana Land Title Association (LLTA), worked closely with the clerk of Court to resolve the issue. Spearheading the effort was Brent Laliberte, president of the LLTA and NOMATA.

Laliberte said First American stepped in and served as project manager to help coordinate and oversee the project. Several members of LLTA's Board of Directors were instrumental in resolving the issue, including Earle Thompson of Fidelity, Steve Sklamba of Fidelity, Peter Keenan of First American and Anne Raymond of Jackson & McPherson.

The computer crash significantly impacted the number of transactions closed in the Orleans Parish during the ordeal. The New Orleans Metropolitan Association of Realtors said there were 244 real estate transactions in Orleans Parish in October. That number dropped to 146 in November, and as few as 70 transactions closed in December. But transactions never came to a complete halt because various levels of searches of other types of indices were utilized, which allowed underwriters to approve some transactions.

There are a few lessons to be learned from this mishap. First, always, always have a backup, and verify the system works. Second, despite advances in technology, having some sort of manual reporting is helpful. This allows the title world to keep working, which allows the economy to keep working. Third, the title industry should strive to have a positive relationship with any clerk's office. While our tasks may be different, we are linked in the real estate transaction process. As Laliberte can attest, there is a synergy that can be experienced when the two sectors work in unison. Because of the positive relationship, the clerk of court asked the industry to assist in designing the parish's next software program to help ensure it works as efficiently as possible.

This is the type of symbiotic relationship everyone should encourage.



– Jeremy Yohe

Something happened in

1991

We recognized a need. We envisioned a solution. We established **RamQuest.**

1991 marked the beginning of a new era when RamQuest entered the market and began to set new standards for what title and settlement providers should expect from business partners.

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Title Companies Still Face New 1099 Reporting Requirements in 2012

With a repeal of the health care overhaul unlikely, one provision of the Patient Protection and Affordable Care Act that will place burdens on businesses is drawing bipartisan fire in Congress.

Section 9006 of the health care legislation includes a provision that requires any taxpayer with business income to issue 1099 forms to all vendors from whom they purchased more than $600 of goods and services that year. 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.

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 goal of this provision is to close the gap between what companies actually pay vendors and what those vendors report on their taxes. The government projects to collect $19 billion over a 10-year period. An estimated 40 million taxpayers will be subject to the requirement, including 26 million who run sole proprietorships, according to a report.

ALTA wants members to remember that this battle is over payments to vendors, not all business payments. Payments by title companies at closing will not be subject to the 1099 requirement. However, payments by title companies for goods like new office supplies, professional services and other operating costs could be subject to the new requirements.

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.
- A doubling of penalties per record from $50 to $100. Companies will now be fined double for every incorrect 1099, resulting from a seller providing incorrect information on the 1099 or a typographical error.

Senate Majority Leader Harry Reid (D-Nev.) and Senate Finance Committee Chairman Max Baucus (D-Mont.) have introduced legislation to repeal this provision.

ALTA supports a repeal of the 1099 reporting requirement.

Freddie Mac Releases Updated Seller/Servicer Guide

Freddie Mac has revised certain refinance eligibility and credit underwriting requirements in the Single-Family Seller/Servicer Guide.

Effective for mortgages with settlement dates on or after May 1, 2011, Freddie Mac will require verification of funds and that purchase money mortgages be seasoned for 120 days in order to be refinanced as a "no cash-out" refinance mortgage.

Freddie Mac also is eliminating the Freddie Mac-owned streamlined refinance mortgages. Currently, streamlined refinance mortgages allow servicers to offer loan-to-value (LTV) ratios up to 95 percent and the ability to roll in all closing costs, financing costs and prepaids/escrows in to the refinance mortgage.

For added flexibility, sellers can also provide cash back to the borrower up to 2 percent of the refinance mortgage amount or $2,000, whichever is less. Freddie Mac will no longer purchase such mortgages after the beginning of May.

With this change, verification of funds will be required for refinance mortgages – excluding Freddie Mac relief refinance mortgages – with the same servicer, where the principal and interest payment increase is less than or equal to 20 percent of the principal and interest payment most frequently made by the borrower during the most recent 12-month period.

ALTA Advocacy Effort Clears Major Hurdle as FHFA Proposes to Ban PTFs

ALTA's advocacy efforts to protect consumers and their home equity from private transfer fee covenants earned a significant victory Feb. 1 as the Federal Housing Finance Agency issued a rule that would limit government-sponsored enterprises Fannie Mae, Freddie Mac and the Federal Home Loan Bank from investing in mortgages encumbered by private transfer fee covenants (PTFs).

"The FHFA took an important step by submitting a rule that limits the spread of this predatory scheme, which adversely impacts the stability of the housing and mortgage market," said Anne Anastasi, president of ALTA. "As an association representing companies that provide homeownership assurance, we applaud the FHFA for recognizing the threat private transfer fees pose to the safe and secure transfer of property."

PTFs are a new controversial financial scheme facing opposition across the country. Developers, in consultation with Wall Street advisers, are attempting to add language to home purchase contracts requiring that a percentage of the sales price be paid to the original corporate owner of a property every time the property is sold, typically for 99 years.

FHFA's proposed rule, which would apply to PTFs created on or after publication of the proposal, excludes fees paid to homeowner associations, condominiums, cooperatives, and certain tax-exempt organizations that use private transfer fee proceeds to benefit the property. A 60-day comment period ends in April. Regulated entities will be required to comply with the final rule within 120 days after publication.

"These third-party fees are a detriment to homeowners and raise the costs of homeownership," Anastasi said. "The FHFA's proposed rule correctly outlaws private transfer fees that have no direct benefit to the property and infringe on property rights. We are hopeful that when the final rulemaking is complete, the FHFA will eliminate this unnecessary risk to consumers."

The proposed rule is similar to ALTA's model legislation that state land title associations are supporting at the state level to ban PTFs. Nineteen states have already banned or restricted this dangerous fee, which steals home equity, lowers home resale values and adds another layer of difficulty to selling a home. Legislation is pending to ban these fees in at least eight other states, including Montana, Nebraska, North Dakota, Pennsylvania, South Dakota, Virginia, Washington and Wyoming.

Fed Defers TILA Rulemaking to CFPB

The Federal Reserve Board does not expect to finalize three pending rulemakings under Regulation Z, which implements the Truth in Lending Act (TILA), prior to the transfer of authority for such rulemakings to the Consumer Financial Protection Bureau (CFPB).

The proposed rules were published as part of the Board's comprehensive review of its mortgage lending regulations under TILA. The first phase of the review consisted of two proposals issued in August 2009, which would have reformed the consumer disclosures under TILA for closed-end mortgage loans and home equity lines of credit. The third proposal was issued in September 2010. Among other things, the September 2010 proposal included changes to the disclosures consumers receive to explain their right to rescind certain loans and would have clarified the responsibilities of the creditor if a consumer exercises this rescission right. The September 2010 proposal also included changes to the disclosures for reverse mortgages, proposed new disclosures for loan modifications, restrictions on certain advertising practices and sales practices for reverse mortgages, and changes to the disclosure obligations of loan servicers.

General rulemaking authority for TILA is scheduled to transfer to the CFPB on July 21, 2011. The Dodd-Frank Wall Street Reform and Consumer Protection Act also requires that the CFPB issue a proposal within 18 months after the designated transfer date to combine, in a single form, the mortgage disclosures required by TILA and the disclosures required by the Real Estate Settlement Procedures Act (RESPA).

FHA Requires Flood Zone Determination on All Mortgages

The Federal Housing Administration (FHA) updated its flood zone requirements for FHA-insured mortgages by issuing Mortgagee Letter 2010-43. Effective for FHA-insured loans with case numbers assigned on or after March 1, 2011, mortgagees are required to obtain a life-of-loan flood zone determination service for any property that will be collateral for the loan. Additionally, no property located within a designated Coastal Barrier Resource System unit will be eligible for a FHA-insured mortgage.

Let ALTA Know How You Use MERS

The MERS system was designed to quickly determine the correct current servicer of any loan on the system in order to obtain payoff information without the typical "telephone tag" or the costly and time-consuming fax/fax back process.

ALTA is interested in learning more about how industry professionals interact with the system, its usability, accuracy of information, and whether there are any areas in which the database could be improved.

To help us understand how your operation utilizes MERS, please take this online survey: *www.surveymonkey.com/s/mersquestionaire*. It should take less than five minutes to complete.

Your responses will be kept confidential and will help us better serve ALTA members. Deadline to take the survey is April 1.

Consumer Financial Protection Bureau Launches Web site

ALTA members will want to become familiar with the new Consumer Financial Protection Bureau web site, which was launched last month.

The CFPB site is *www.consumerfinance.gov*.

The site includes information about the Bureau's core function, its organizational structure and implementation.

Second Agent and Abstracter Forum Coming in March

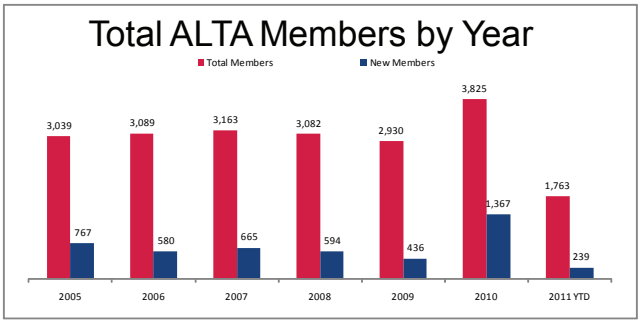
The second of five Agent and Abstracter Forums will be held March 27 at the Sheraton Four Points near the airport in Kansas City, Mo. The first forum was held in January in Nashville, Tenn., where attendees heard Marx Sterbcow give a presentation on RESPA enforcement trends. The afternoon roundtable discussion covered marketing, ways to increase business with social networking, health insurance options, staffing policies and how RESPA changes increase the time it takes to process orders. These roundtable discussions will be continued in Kansas City. Darryl Turner, CEO of the Darryl Turner Corp., will give a presentation on how agents can grow their business.

ALTA Membership Reaches New Heights in 2010

Despite the sluggish economy over the past three years, professionals in the title insurance industry understand the value of association membership.

ALTA finished 2010 with 3,850 members, representing an increase of more than 70 percent since 1999 and up nearly 1,000 members from 2009. Of all members, small agents comprise more than 90 percent of association membership. Membership among small agents stands at 3,500, up from 2,732 in 2009.

It's with this increased support that we strengthen the advocacy of the land title insurance industry that legislators, regulators and other policymakers have come to know and respect.



Armed With the Right Technology?

Web-based software systems and a slew of other technology advances provide tools to remain competitive and profitable.

The continued economic downturn has led to a boom in new regulation as well as a fresh crop of increasingly money-conscious consumers who are becoming savvier in their decision making when it comes to closing costs. Title agents have been forced to examine their operations and find ways to become more efficient. This is why technology has become such an important asset for title agents as software companies have stepped in and revolutionized the way the entire industry does business. >>

By Jeremy Yohe

Because of the intensified focus on cost, local or even regional title companies can no longer charge $2,000 per closing and go home happy, according to Jeremy Solomon, president of the New York-based Mandrien Consulting Group.

"The combination of increased information access via the web and a general tightening of household budgets mean consumers are getting shrewder," he said. "Consumers simply aren't willing to pay a premium for services whose value is often unclear to them. Moreover, they can shop around. They can look at 10 lenders and 10 title companies in an afternoon and come to an informed decision based on pricing and other customers' reviews. Title fees have thus been driven down to the point where many companies are unsure how to remain profitable."

Tony Farwell, CEO of real estate information services company ClosingCorp, agreed technology plays an important role as the ability to process loan applications quickly and with accuracy has become critical in this new regulatory environment.

"Only through the deployment of technology equipped to handle these processes will lenders be able to compete for business while avoiding costly tolerance violations," he said. "Because of the way companies like title insurance are regulated, technology of this scope and magnitude is highly complex. How certain services are grouped and categorized varies between states so costs don't fit neatly into the categories listed on the GFE. Customs, such as whether the seller or buyer pays for certain closing costs, vary not only from state to state, but often within different regions within a state."

A single database must be able to manage all of these differences and connect all the interested parties.

"Those who haven't embraced the new technology are struggling, if they are still around at all," Solomon said.

> "When there is no software to install or update on your desktop computer, the technological heavy lifting is greatly reduced—if not eliminated."

Up in the Clouds

One specific technology opportunity that may help title agents looking for a competitive advantage is cloud computing, which can centralize operations and create efficiencies. While the cloud-computing concept has been around for several years, companies are finally understanding the technology involved and beginning to trust that they are not putting their proprietary information in jeopardy simply because it will move outside their firewalls.

Basically, cloud computing occurs when the software resides on the Internet instead of your desktop. So when frequent updates are necessary, having the in-house technical expertise to perform the updates is not your responsibility or headache.

"When there is no software to install or update on your desktop computer, the technological heavy lifting and network downtime is greatly reduced — if not eliminated," said Barbara Miller, president and chief operating officer of TSS Software Corp., an independent software provider for the real estate title and settlement services industry.

She advised that title agents should familiarize themselves about cloud computing, as there are many pros and cons compared to the traditional method of installing and maintaining software. Often commingled or confused with the "cloud" is the term "SaaS" – Software as a Service. SaaS is a pricing model, not a computing model. In the simplest terms, it means you rent, not own, the software.

"This covers software, not data," Miller said. "So Terms and Conditions, Privacy Policies and Master Subscription Agreements must be read carefully to understand the vendor's obligations to maintain and secure your data."

While the business decision to move to cloud computing and SaaS pricing must be made carefully, title agents may very well find that the combination helps companies efficiently and affordably adapt to the ever changing regulations and scalability that the current real estate market demands.

Web-Based Systems: Pros and Cons

Tim Conley of SoftPro provides a list of the positives and negatives of using a web-based system.

The major benefits of running software as a hosted solution:

- Centralized database and reporting
- Easy access from anywhere with a high-speed internet connection
- Easy to open and close remote offices; just need Internet and a printer (In the title industry many companies can set up temporary offices outside a new subdivision/condo/timeshare or in a real estate office very quickly.)
- Employees can assist and share workloads between offices easier
- Software updates are easier to deploy because everything is centralized
- Employee training and job shadowing can be offered through these types of deployments
- Easy to do remote closings at a real estate office, client's home or even at their place of work; just need Internet and a portable printer
- Software licensing costs can often be reduced with everything being centralized
- Regular maintenance (back-ups, new equipment, personnel) can all be handled in one spot
- In a thin-client environment (Citrix, Terminal Server and 2X) you can use a dummy workstation because all processing takes place on the server

Major drawbacks or concerns:

- All your eggs are in one basket (Server crashes, fiber line gets cut, hardware fails); all your offices could be down at once
- Expensive initial set-up (especially to build in the proper way to set up this type of infrastructure)
- Will want to look into Fault Tolerance, Business Continuity and Disaster Recovery best practices (A "hot site" would be optimal so a company can roll over their installation in an emergency situation. This requires managing a separate complete install with nightly back-ups and data migrations, preferably in another region of the country.) This would protect you from weather, fire, theft, water damage, hardware failure and fiber cuts to name a few
- Company will need to understand their licensing and data storage agreements:
  - If you want to change providers (will you need to then host the application and maintain it to keep your data)
  - If you leave a provider, do you own the licenses to the software? How will you be able to access your old/current data?
  - What would be the roll-over plan to a new system? Will you now have to pay two providers, both the old and new?
  - Will the company you are moving from give you adequate time to cut over or will they just turn the servers off on you?
  - What is the plan if the company hosting or providing the software goes out of business?
  - Who owns the data being maintained on the servers?
  - Will the hosting company access this data or use it for any other purposes?

Efficiencies Gained

There are several other reasons agents are dipping their toes into the web-based world. First, agents are becoming more tech savvy and systems are easier to set up. Agents are seeing the success of other industries moving in this direction with SalesForce.com and GoDaddy.com.

"Title agents understand the need for centralized reporting," said Tim Conley, vice president of sales and marketing for SoftPro. "Having external parties manage data, application and back-up is very important."

Richard Kasunick, director of information technology for North American Title Group, said his company's California operations transitioned to a web-based system three years ago. The move to a centralized platform was made to reduce production and technology costs, while increasing efficiency. He said web-based solutions are viable options for companies of all sizes, not just multi-state operations, such as North American, which is licensed as an agent in 14 states and D.C., and underwrites in six other states.

"The temptation to have a server in a closet down the hall will always be there for small companies," Kasunick said. "But most small companies with one or two branches can afford to put equipment in a data center."

One of the major advantages to switching to a hosted system is security, according to Kasunick. Data security is a concern for all companies, but smaller operations that house data on an office computer are at risk.

"If I were a small title company, that would be my biggest fear," Kasunick said. "What happens when my server disappears? On a hosted system, data is secure from theft and it's safe from disasters such as power outages and storms. Plus, the data is also backed up. You don't have to worry about backups not working with a hosted solution."

When there are changes to systems that require hardware software adjustments, the hosting company will take care of it. So if a title company is looking to integrate with a lender's mortgage production software, they don't need to worry about it.

"Another example is with audits," Kasunick said. "Even if you are a smaller company getting audited, with a hosted solution, it's easy to provide an SAS 70, which is a standard auditing report."

A web-based system also allows a company to work wherever Internet is available, through disasters and wherever your clients may need to close.

"In theory, if you have a laptop and a phone, you can be in business," Kasunick said. "If a hurricane comes through, you can keep working. On a smaller level, if there's an electrical outage on a couple of blocks or if a gas line breaks, you can pick up and go where there's power. This also allows you to participate in the world of mobile closings if your data is web-based."

Cloud computing may not be for every agent, however. Conley said all of the web-based title and closing production applications are "thick or fat client applications hosted in an Application Service Provider type environment."

Web-based solutions have found it difficult to get traction in the title space. Two previous solutions (escrowdata.com and eTitleAxis) are no longer in business. But then along came RESPA Reform. According to Miller, the roll-out last year of the new HUD-1 provides an example of how cloud computing can benefit title companies. Because of the varied lender interpretations of the new HUD-1 form and constant clarifications released by HUD, software updates were needed frequently to meet the needs of each party.

JoAnn Norris, owner of First Choice Inc. in Pennsylvania, said she uses web-based software specifically to complete the new GFE and HUD-1. She gets her commitments typed and needed an effective way to complete the settlement statement.

"My time in preparing the HUD-1 is very efficient with this type of system and we all keep updated on the current rules and regulations," Norris said. "My experience has been very user friendly."

The Need for Speed

Conley said that while there may be a handful of web applications that allow data to be keyed into a HUD and printed out without performing any sophisticated calculations, "I'd be surprised if anyone has a true one that performs to acceptable production speed levels for both title and escrow."

"The problem with creating a production system that is truly web-based has always been a speed issue of the very intense calculations these systems maintain as well as the rendering of documents in this type of solution," he said. "Imagine keying data into a system and when you are done with each data entry page, having to wait for the system to 'refresh' while all the calculations are performed for all the data in the file, such as tax prorating, aggregate

escrow, commissions, tax stamps, all the splits on the HUD, etc."

When making any type of software change, agents must consider product functionality. Many evaluations only address the ability of a potential technology to fit into an operation.

"Company management must also step back and look at the functionality of any solution under consideration as a whole and analyze how that functionality can work to benefit their company," said Mark McElroy, chief executive officer of RamQuest. "If this does not happen, problems are created that won't be realized until later."

Finding the Right System

A number of obstacles could inhibit successful implementation and acceptance of a solution throughout an organization. A new software product should have a proven method for integrating with a company's operating account. If not, McElroy said a company will likely face lengthy delays in getting this integration completed and potentially require an additional investment. A system must have the flexibility to configure settings to match the needs of the company, not force integration of costly custom programming.

McElroy also said a software vendor should be responsive to making required changes. It's important to know if a vendor waits until the last minute to send updates for changes or if the vendor responds to changes in a timely manner, enabling customers to properly train and prepare their organization.

"You can look at how they responded to the recent RESPA reform changes for a benchmark," he said. "These changes required the work flow of title operations across the country to change so it was not only a software change on the part of the vendor, it was also a training consideration for title companies."

While it's great to be excited about the promise of a new product, company management must look at the big picture and consider all the factors before making a decision. When evaluating a new application, a company will want to find a product that is intuitive and consistent across the entire application.

"If you simply look at one area of functionality, order entry for example, and make a decision at that level because your team liked how the fields flow or how the pages look and feel, but you neglect to consider that the flow and functionality of the rest of the application were completely different from one section to another, then you will likely encounter difficulty in training and implementation," McElroy said. "Your organization will experience inefficiencies in training and it will be difficult for anyone to move from section to section because of the difference between all of the components of the application."

Other important training features to look for as you evaluate title production solutions are supporting mechanisms like electronic help and/or research tools. Both of these will help create a user environment that is intuitive, easy to learn and one that encourages the sharing of knowledge.

"This enables your organization to more easily incorporate cross-training throughout your organization which results in a very well rounded and effective company," according to McElroy.

Miller said it is important a title agent chooses a Cloud/SaaS HUD-1 vendor that is as transparent and reputable as the vendor selected for a desktop computing solution.

"Too often, vendors hide behind their web sites," she said. "They do not publish phone numbers and physical addresses, only e-mail addresses and very little about who they are. They opt for a totally web-based relationship with a heavy dose of anonymity."

This should be a red flag, according to Miller. A cloud solution requires at least as much personal relationship management from the vendor as a desktop solution. Cloud computing vendors typically offer free trial versions of their solutions.

"It is important that you not only assess the solution's functionality to assure that it meets your needs, but also evaluate the vendor and their relationship management practices," she said. "For example, can you get competent technical support in real time when you need it?" ■

Technologies Your Title Company Won't Survive Without

There are several tech tools available to help companies remain competitive and profitable.

Here's a glance at a few technology options title insurance professionals can take advantage of to remain profitable in a competitive and shrinking market place.

Web Portals

Good communication is essential in any business. Web portals allow secure access to a title company's files for all third parties with an interest in them, including customers and lenders. Jeremy Solomon, president of the New York-based Mandrien Consulting Group, explained that an abstractor can now upload a completed abstract directly to a file himself, eliminating the need for middlemen, document handlers and even email in the case of some software programs. Lenders can also download completed title commitments, wiring instructions, tax certifications and more without having to request them from the title company. Any entity that needs access to a file or that needs to upload a document directly into a file can do that.

"This has obviously revolutionized processes across the title industry," Solomon said. "It has also made it so that many companies are unwilling to partner with title organizations that haven't begun employing these convenient, time-saving technologies."

Integration with Push/Pull

One major step beyond the web portal, XML push/pull integration is quickly becoming the industry standard. Third parties using the web portal have quickly realized how much more efficiently they can work when granted direct access to a title company's platform. However, while this technology is obviously easier than calling or emailing, it still requires them to move from their own software platform to the title company's web site.

Software integration has changed this in a big way. Information can now be "pushed" and "pulled" between many different types of software platforms automatically, reducing the need to view documents and notes on a title company's web portal. The best example of the positive effects of this might be seen in the order entry process. With software integration, rather than faxing or emailing a request, or even entering it on the title company's web site, lenders can do it with the push of a button.

"Software integration means that when lenders push that button, all pertinent information travels directly into the title company's software," Solomon said. "It even automatically opens a new file. This eliminates the need for double-entry processing on both sides."

A second example of the benefits of integration can be seen in its impact on communications with major abstractors. As you know, every new file requires an abstract. In the past, this meant many email communications to request and receive completed abstracts. However, as abstract companies have become more tech savvy, they have learned how to integrate with title companies so that they can simply "push" orders back and forth without any verbal or email communication.

Paperless Organization

Many title companies are still working with paper files, or have only started the transition to a paperless environment. Previous generations of software allowed digital storage of documents, but did little to organize

them or make them readily accessible to you or your client. This may have slowed down the movement to a totally paperless office.

However, new software programs allow documents to be organized into categories, labeled and given tailored access privileges so that different departments, clients or vendors can view them, Solomon advised. Varying levels of access can be granted based on whether the person accessing is a lender, borrower, abstractor or even an offshore outsourcing company.

"Documents created or scanned into the software remain organized and accessible by all involved parties," Solomon said. "Scanning is even more efficient now that you can scan a document directly into a file and have it categorized automatically. This eliminates the need to search a scan folder and upload files manually into the software. E-signatures also eliminate the need to print, sign and rescan documents, saving countless hours of productivity."

Process Driving

Check-lists have long been used to keep files organized. However, they have rarely been used effectively. Now, Solomon said, good software platforms use functions called "actions," which are, in essence, highly customizable to-do lists. These will help you stay focused and organized, increasing efficiency and improving margins for your company.

Actions lists can be over 100 items long. They can be individually tailored to the needs and requirements of the lender, location and product type. As each action is completed, the next action in the chain will begin automatically. Custom action lists are exceptionally efficient ways to stay organized.

However, a significant new feature coming to the market will be the ability to complete actions based on when certain documents are uploaded, according to Solomon.

What does this mean? Well, for instance, suppose an abstractor logs in to the secure web portal, uploads his land records abstract and categorizes it accordingly within the software. The "receive abstract" action will automatically self-complete and trigger the action of "type title" to begin. There is no human interaction with the title company involved in this process. No email of any kind needs to be sent or received.

"Small improvements like this might seem trivial, but when you consider the volume and scope of the documents that are constantly being uploaded, these minute upgrades can account for thousands of minutes of productivity," Solomon said.

Custom Templates

Perhaps the most useful and simple of these technologies are custom templates, according to Solomon. Data entry can be a cumbersome, repetitive waste of valuable time, and custom templates can help to solve this issue through automation.

Just about every piece of information you need in order to create all relevant documents is available in software programs. Rather than searching through a folder on your computer that contains hundreds of Word templates for deeds, form letters, wiring instructions, and then spending hours a day editing these documents for each specific use, you can automate 95 percent of this process.

Custom templates are like Word templates, but they contain special fields linked to your software platform. They require a bit of set-up, but once they are ready, you will find that a simple click fills all of the relevant fields with the appropriate data.

> "With a minor amount of up-front work and maintenance, all of your standard documents can draft themselves."

"With a minor amount of up-front work and maintenance, all of your standard documents can draft themselves," Solomon added.

Solomon said one of the most salient examples of this would be deed drafting. Assuming a title company has a licensed attorney for each state in which you are doing business, a deed can be generated in seconds. The legal description, grantor, grantee, parcel ID and all other necessary data will populate automatically within the deed. It will then be sent to the attorney for approval before forwarding itself straight to the client. According to Solomon, automation of these

detailed templates reduces errors and increases efficiency by 1,000 percent or more for many repetitive processes.

Following these technological improvements will benefit smaller enterprises just as much as major national title companies, according to Solomon.

"Software and technology are changing and improving at a staggering rate," he said. "Keeping up with all of the new features can be challenging, but embracing automation and technology is no longer optional. Many lenders now require XML integration and streamlined communication systems in order to do business. As profit margins continue to shrink due to price compression, the slack must be picked up somewhere. Technology can do that."

Uniform Loan Delivery Dataset

A joint effort by Fannie Mae and Freddie Mac at the direction of the Federal Housing Finance Agency (FHFA) is underway to standardize and drive data quality that benefits the entire mortgage industry. Beginning Sept. 1, 2011, all appraisers must complete the appropriate appraisal forms as required by the Uniform Appraisal Dataset (UAD). All conventional loan deliveries to the GSEs must meet the UMDP requirements by March 19, 2012. Currently, HUD-1 data points are not necessary, but will be required in a subsequent implementation phase, giving lenders additional time to plan for collecting the data and updating their systems as needed. For loan deliveries, data must be delivered in MISMO v.3.0 XML format and, if the loan application date is on or after Dec. 1, 2011, the delivery must include the required ULDD data points. For title companies to remain competitive, they will need to be able to integrate with the lender's technology to provide HUD-1 data in the required format once it's required.

Integrating With Lenders

To increase the accuracy of their GFEs, lenders need access to local vendors and their costs – not only in filling out their own GFEs, but to provide ample names to their borrowers who want to shop on their own. Tony Farwell, CEO of real estate information services company ClosingCorp, said this is especially critical for large national lenders struggling to compete at the local level.

"To simplify the process, technology needs to integrate these national databases into popular LOS platforms, making it easier for lenders to populate the new GFEs and turn them around more quickly," he added.

A growing trend is for lenders to partner with third-party technology vendors who have already amassed these databases and are able to deliver the information seamlessly. According to Farwell, many technology vendors are limited in what functions they can perform, how efficient and effective their solutions are, and how comprehensive their databases are in terms of vendor categories, geographic coverage and real-time costs. Perhaps most important of all – a technology partner must be willing to stand behind its data and protect lenders from the large fines levied for tolerance violations by providing a compliance guarantee.

"Lenders and settlement service providers who have partnered with technology partners with the bandwidth to process Good Faith Estimates in every major city in all 50 states, with speed and accuracy, have been able to compete at the national and local level while providing the best value to their customers," Farwell said. ■

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Title Companies Absorbing Questionable Fees for Payoff Requests

In many states, title companies are unable to pass along this expense.

As companies in the financial industry seek to make up for lower revenues amid heightened federal regulations, many banks are finding new ways to generate income.

While some banks are now charging monthly maintenance fees for consumers who carry low account balances, PNC Bank recently started charging $20 for payoff information requested by third-parties.

When calling the toll-free number 888-PNC BANK for a payoff amount, title agents who are not PNC customers are directed to call a "900" number. After working through the menu, the message indicates PNC now has a merchant loan payoff service charging $20 per call for non-PNC customers seeking payoff information.

The American Land Title Association (ALTA) brought this to the attention of the Department of Housing and Urban Development, which is now investigating the practice.

The payoff fee is being absorbed by some title companies. In states where title fees are "all-inclusive" or if the state's definition of title services/closing services includes obtaining payoffs and the charge for title services/closing services are filed, the fee cannot be passed through to the consumer, according to Anne Anastasi, president of ALTA.

"It could be dangerous to allow a consumer to order the payoff and bring it to closing because it could be too easy for a dishonest consumer to replicate the payoff on a computer and change the figures," she said.

When asked about the charge, PNC officials have offered varying descriptions.

The first response from corporate communications said that "PNC Mortgage is not using 900 numbers for payoff statements."

States Where Rates are All-Inclusive or Some Variation	
Alaska	R, S, X, C
Arizona	R, S, X
California	R, S, X, C
Colorado	R, S, X
Hawaii	R, S, X, C
Idaho	R, S, X, C
Montana	R, S, X, C
Nebraska	R, S, X, C
Nevada	R, S, X, C
New Jersey	R, S, X, C, E
New Mexico	R, S, X
New York Upstate Zone 1	R, X, C
New York Downstate Zone 2	R, S, X, C
Oregon	R, S, X
Pennsylvania	R, S, X, C, E
Tennessee	R, S, X
Texas	R, S, X
Utah	R, S, X
Washington	R, S, X, C
Wisconsin	R, S, X
Key: R = Risk; S = Search; X = Exam; C = Closing; E = Escrow	

ALTA was told PNC Mortgage accepts payoff statement requests through:

- the customer service interactive voice response (IVR) unit;
- customer service agents; or
- customer carte net (CCN) - a web-based self-service application.

According to an email from PNC, "a priority service option is offered for payoff statements requested through the IVR or a customer service agent. Priority service is instant processing of the payoff statement request and delivery of the payoff statement to the requestor via fax.

Non-priority service payoff requests are processed and placed in the U.S. mail within 48 hours of receipt. We charge a $20 priority service fee only for the priority service option. The requestor is informed of the option and must select the priority service option. If the requestor selects priority service we fully disclose the priority service fee of $20. We do not charge a fee for non-priority service payoff requests."

A second representative said the $20 fee for payoff information is only for non-PNC customers. The representative said they have charged non-customers this fee for years.

Another representative from PNC's executive office said the bank only charges $20 for priority requests to be faxed the same day. The representative provided two numbers to call to get payoff info. The first number provided (412-061-1178) is no longer in service. The other number provided (800-822-5626) is different than the 888 number, and does not provide information about payoffs unless you have an account number.

ALTA questions that if there is another toll-free number that offers free payoff statements for third-party requesters, then why does the bank's main number direct third-parties to the "900" number that carries the $20 fee? ■

ALTA Members Sound Off

PNC charging third-parties to obtain pay-off information has been a point of frustration for many in the title industry. Here are some thoughts from members in Indiana, Maryland, Pennsylvania and Texas.

"When I call the number (800-822-5626) and go through all the prompts to order a payoff as a third party, it tells me I need to call a new number, which is 800-622-6736 and this is a non-working number – so back to square one. The only way that we have found to get PNC second mortgage payoffs is the 900 number (and pay $20) or ask the customer to call and obtain the payoff and have PNC fax it directly to us. I do not like either one of these options. I am so glad ALTA is looking into this."
Kristin Epler, client care department, *Chicago Title*, Greenwood, Ind.

"PNC has been charging this fee for at least a few years as I can remember. Their system does nothing but direct settlement agents to the 900 number. Sensible settlement agents will not allow the customer to generate his or her own payoff statement, for obvious fear of fraud."
Thomas Rodden, *RGS Title*, Silver Spring, Md.

"PNC charges $20 to our phone bill to obtain a payoff. When the transaction is a PNC-to-PNC refinance, I ask the processor to obtain the payoff so the customer does not have to pay the fee. Unfortunately, mortgage underwriters are now asking for payoffs prior to a loan being approved, so we are ordering the payoffs, and then, when the deal goes south it is just another charge that the title agent is 'stuck' with."
Francine D'Elia Wirsching, *Community First Abstract*, Blue Bell, Pa.

"We ran into this once recently with PNC, while trying to obtain a payoff. I instructed my staff that they were absolutely forbidden to call the 900 number, and that we would NOT pay a fee for obtaining a payoff. I have personal accounts at PNC, so as I recall, I believe we resolved this by calling my PNC bank manager for assistance on this."
Karen Clarkson, CEO, *Real Estate Settlement Team*, Pen Argyl, Pa.

"This fee is a complete and total rip-off no matter what the amount. The mortgage holder will snail mail a payoff at no charge, incurring expenses for printing, envelopes and postage. Yet when they choose a no-cost-to-them electronic delivery, the cost to the consumer is huge."
Jim Schwarzbach, *El Paso Title Company*, El Paso, Texas

Lenders Asking Title Agents to Sign Red Flags Rule Agreements

With the Red Flags Rule going into effect on January 1, some lenders began asking title agents and settlement service providers to sign agreements that they will adhere to the rules promulgated by the Federal Trade Commission (FTC).

The Red Flags Rule requires financial institutions and creditors to develop and implement written identity theft prevention programs, as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. ALTA believes that the escrow accounts utilized by title agents and settlement service providers do not fall within the Rule's scope.

Despite this, ALTA is seeing lenders push title and service providers to sign "Red Flags Agreements."

These agreements require the service provider to follow reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft. They also require the service provider to promptly report any Red Flag incidents.

David Shean, owner of Escrow Essentials in Los Angeles, believes this is a further example of lenders passing off liability to settlement agents.

"I also do not believe that the regulations pertain to title companies or escrow companies in the normal course of our settlement services business," he said. "This is an example of the trickledown effect where lenders believe that compliance goes beyond their own company compliance. We will be better served if we uniformly state that we are not subject to these regulations."

Olen Snider, owner of Summit Title Services in Wyoming, said he concluded when the regulation came out that it did not pertain to the title industry.

"I will have no problem with a lender asking us to agree to comply with the regulation, since compliance in my evaluation requires us to do nothing, or at least nothing more than we already do," he said.

In 2009, ALTA sent a letter to the FTC seeking clarification and guidance on whether or not the title insurance industry falls under jurisdiction of the Red Flags Rule.

Thanks to ALTA's efforts, the FTC is taking a narrow view on whether a title/escrow operation's transaction account falls within the Rule's definition for a "covered account."

Through this interpretation, it appears the FTC won't subject a title/escrow operation to the Red Flags Rule unless the customer has a book of checks (negotiable instruments) or a debit card to use in connection with the account. That does not happen with earnest money deposits, etc., held in a pooled trust fund account under the control of the escrow/title entity for application in connection with the closing. Further, Congress specifically exempted practicing attorneys when it passed the "Red Flag Program Clarification Act of 2010."

In 2007, pursuant to the Fair and Accurate Credit Transactions

Act of 2003, the FTC promulgated the Identity Theft Red Flags Rule requiring "creditors" and "financial institutions" offering or maintaining "covered accounts" to develop and implement written identity theft prevention programs. (The FTC joined a handful of other federal agencies in promulgating a joint Identity Theft Red Flags Rule. The FTC's Rule applies to financial institutions and creditors that are subject to administrative enforcement of the Fair Credit Reporting Act by the FTC.)

The term "creditor" in the FTC Red Flags Rule was broadly defined to include: "any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit."

The FTC took the position that professionals such as attorneys, doctors, and accountants were included within the definition of "creditor" because they allow consumers to pay for services after the services are rendered.

While the Rule became effective on Jan. 1, 2008, with compliance required by Nov. 1, 2008, the FTC issued several Enforcement Policies delaying enforcement of the Rule. In response to the FTC's position regarding the definition of "creditor," professional organizations such as the American Bar Association and the American Medical Association sued the FTC. At the request of several Members of Congress, the FTC agreed to further delay enforcement of the Red Flags Rule through Dec. 31, 2010.

> "I also do not believe that the regulations pertain to title companies or escrow companies in the normal course of our settlement services business."

On Dec. 18, 2010, President Obama signed the Red Flag Program Clarification Act of 2010. The legislation amends the Fair Credit Reporting Act by defining the term "creditor" as follows: "Creditor" means a creditor, as defined in Section 702 of the Equal Credit Opportunity Act, that regularly and in the ordinary course of business:

1. *obtains or uses consumer reports in connection with credit transactions;*
2. *furnishes information to consumer reporting agencies in connection with a credit transaction; or*
3. *advances funds to or on behalf of a person based on that person's obligation to repay the funds or repayable from specific property pledged by or on behalf of the person.*

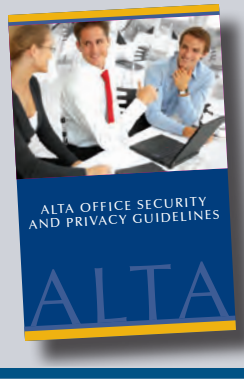
The third category, however, does not include a creditor that advances funds on behalf of a person that are incidental to a service provided by the creditor to the person.

The legislation does include a provision that would allow other types of creditors under Section 702 to be subject to the Red Flags Rule if the agency with authority over the creditor (e.g., federal banking agencies, National Credit Union Administration, or the FTC) determines that the creditor offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft.

By narrowing the third category of creditors and eliminating those who advance funds on behalf of a person that are incidental to a service provided by the creditor, professional service providers such as attorneys, accountants, and doctors no longer fall within that part of the definition of "creditor."

ALTA Office Security and Privacy Guidelines Booklet

ALTA has developed a document to provide guidance on how to protect sensitive customer and company information and should be considered as your company develops office security and privacy policies. You can find the document at *www.alta.org/publications*.



Title Insurer's Duty to Defend Addressed in Several Court Cases

Several cases illustrate the risk in a title insurance company's obligation to defend the insured.

By James Bruce Davis

It is well known that title insurance obligates the insurance company to pay a loss that a policyholder sustains if his title to real estate is not as stated in the policy. Another benefit of title insurance is the company's duty to defend litigation in which a third party challenges the policyholder's title.

The company's duty to defend protects the policyholder from the risk of having to pay attorneys' fees, court costs and related expenses. As insurance companies know, the costs of defending a policyholder's title can be expensive.

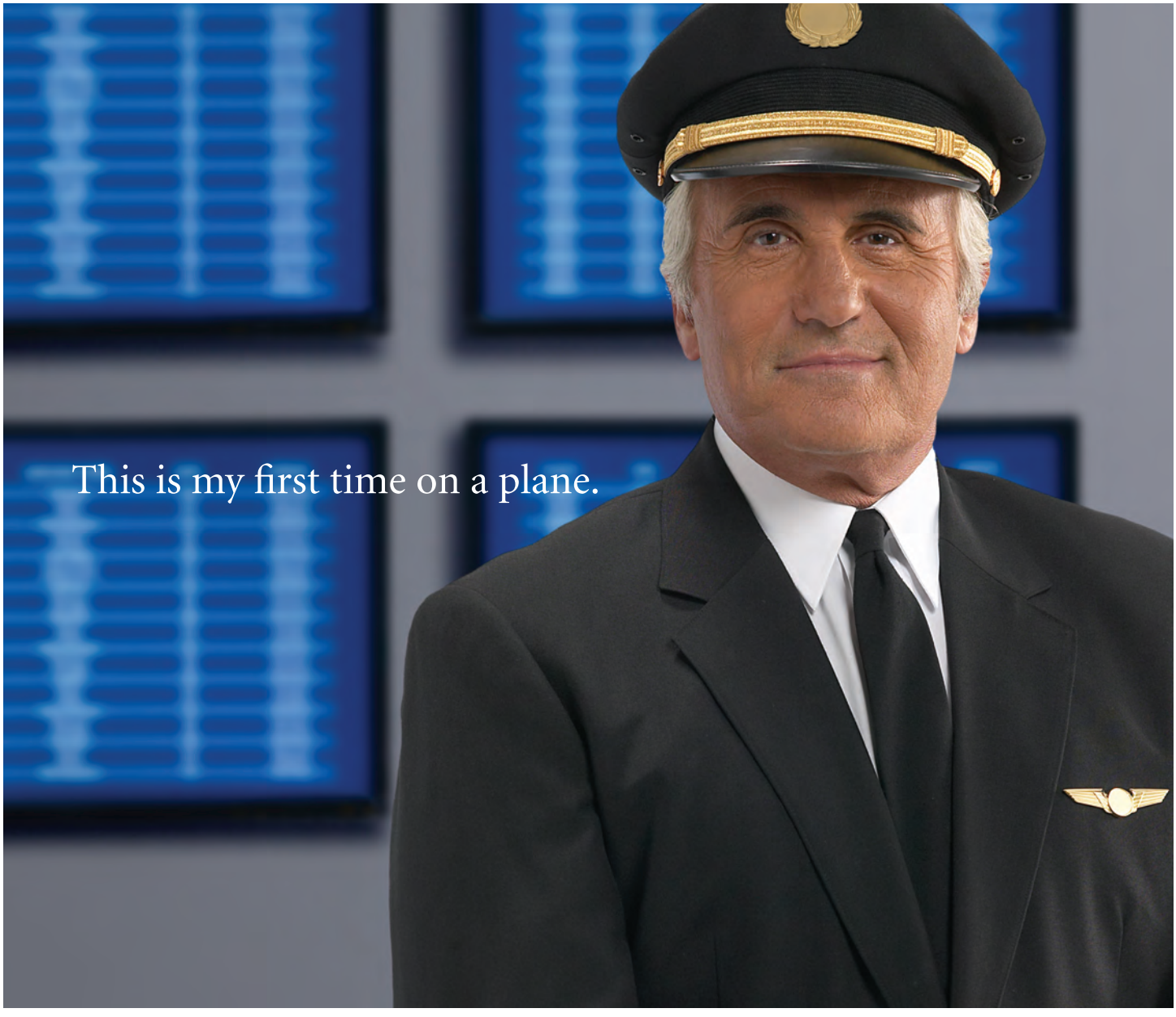
Defending a policyholder's title is not without benefit to the insurance company. By defending the policyholder, the company may be able to defeat a claim that, if successful, would obligate the company to pay a loss. To assure this benefit, the policy gives the company the right to sue in the policyholder's name to fix title problems. If the company succeeds in fixing a title problem by litigation or any other lawful means, the company fulfills its obligations under the policy, and need not pay a loss.

The policy provisions regarding the defense of the insured title are usually a win-win bargain for the company and the policyholder because they have a common interest in defending the title. However, situations sometimes arise in which the company and the policyholder do not see eye to eye. Two of those situations were the subject of discussions by the ALTA Title Counsel Committee.

The first situation arises when the cost of defending the policyholder's title becomes exorbitant. In that situation, the company would prefer to skip the defense and pay the loss. The policyholder, in contrast, may want the title problem fixed, no matter what the fix costs. After all, the company is paying the legal bills.

This issue arose in **Mortensen v. Stewart Title Guaranty Co.** ***(235 P.3d 387, Ida. 2010)***, decided by the Supreme Court of Idaho in 2010. Mortensen owned a parcel of land near Coeur d'Alene, Idaho, for which he purchased title insurance from Stewart Title. For access to the property, Mortensen used a primitive road that crossed property owned by Dennis and Sherrie Akers. Although Mortensen had an easement for access over part of the Akers' property, the easement did not extend all the way to the nearest public road. For a time, the Akers had no objection to Mortensen's use of the access road, but trouble arose when Mortensen decided to subdivide his property into a housing development and needed to widen the access road for that purpose. After the Akers declined Mortensen's request for an easement, Mortensen and a business partner entered onto the Akers' land, bulldozed a gate, and began excavating the road. The Akers responded with a suit for trespass, negligence and quiet title.

Stewart Title provided counsel to defend Mortensen on the quiet title claim and, due to the difficulty in separating causes of action, defended him on the tort claims as well. After a seven day trial, the trial court found for the Akers and awarded them $10,000 in damages for emotional distress, $51,000 in treble damages for trespass and $150,000 in punitive damages. Two appeals followed. In the second appeal, the Idaho



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Supreme Court ruled that Mortensen had a 12.2-foot wide prescriptive easement to use the access road, but remanded the case to the trial court for further fact finding on the exact location of the easement and a redetermination of damages. After the third trial, Mortensen wanted to appeal again, but Stewart Title decided enough was enough. Stewart Title paid Mortensen the $200,000 policy amount, and said the company was through defending him.

Mortensen responded by suing Stewart Title, claiming the company had breached its duty to provide a usable route to his land. The Idaho Supreme Court seemed to have little difficulty in rejecting this claim. The Court did so on two grounds.

First, an insured is entitled to recover only up to the amount of the insurance coverage under the policy, and there was no dispute that Stewart Title had paid Mortensen the $200,000 policy amount. Second, Section 6 of the policy (apparently a 1992 ALTA owner's policy) plainly gave Stewart Title the option of terminating all liability under the policy, including liability for defense costs, by paying the amount of the insurance, together with any legal defense costs authorized by the company prior to the exercise of this option. Therefore, Stewart Title did not breach the insurance policy by opting to pay the policy limit.

Another potentially troublesome situation arises when someone sues a policyholder on multiple claims, only some of which are insured by the policy. Under standard ALTA policies, the insurance company's obligation to defend "is limited to only those stated causes of action alleging matters insured against by this policy."

In Mortensen's case, Stewart Title decided to defend him against all of the Akers' claims, even though some of the claims, such as the claim for trespass, were not covered by the policy. Stewart Title did this because of the difficulty in apportioning defense costs between covered claims and non-covered claims. The defense of the Akers' quiet title claim overlapped with the defense of the trespass claim.

In similar situations, title insurance companies sometimes decide to defend only the claims that the policy covers. However, defending fewer than all claims received mixed reviews in the court decisions presented at the Title Counsel Committee meeting. One federal court, applying Illinois law, ruled that a title insurance company was obligated to defend only the covered claims. Another federal court, applying Texas law, ruled that a title insurance company had to defend all of the claims against the insured, even though the policy did not cover all of them.

In **Philadelphia Indem. Ins. Co. v. Chicago Title Ins. Co.** ***(Case No. 09 C 7063, 2010 U.S. Dist. LEXIS 69581, N.D. Ill. July 13, 2010),*** Chicago Title and the Philadelphia Indemnity Insurance Company (Philadelphia Indemnity) both provided insurance to a mortgage lender, Western Capital Partners LLC. Several real estate developers filed a six-count complaint against Western Capital over a mortgage foreclosure Western Capital had commenced against them. Chicago Title agreed to defend four counts of the suit, but declined to defend the remaining two counts because the policy did not cover them. Western Capital then requested Philadelphia Indemnity, its liability insurance company, to defend the remaining two counts.

Philadelphia Indemnity objected, arguing that Illinois law required Chicago Title to defend the entire suit, and claiming that Philadelphia Indemnity's policy should be considered excess coverage. Philadelphia Indemnity filed a declaratory judgment action to resolve the dispute, and then filed a motion for judgment on the pleadings.

The Philadelphia court agreed that, absent contractual language to the contrary, Illinois law obligates an insurance company to defend all claims in a complaint if the policy covers at least one of the claims. However, the Court was of the opinion that this general rule did not apply if the insurance contract clearly limited the insurance company's duty to defend. Upon determining that the ALTA policy used by Chicago Title

Top Lawsuits Impacting the Title Industry

Don't miss a coming edition of TitleNews as ALTA's Title Counsel breaks down several recent court decisions and discusses the relevance to the title insurance industry. This is a must-read for ALTA members even if these decisions don't occur in your state or jurisdiction because they may indicate a trend in the interpretation of legal issues. Agents and underwriters unaware of legal outcomes could potentially leave their operations vulnerable to unsuspected liabilities.

clearly limited the company's defense obligation to covered claims, the Court denied Philadelphia's motion for judgment.

In **Lawyers Title Ins. Corp. v. Graham Mort. Corp.** *(Case No. 4:09-cv-262, 2010 U.S. Dist. LEXIS 64125, E.D. Tex. April 16, 2010; adopted, 2010 U.S. Dist. LEXIS 64222, E.D. Tex. June 28, 2010)*, a partnership, Douglas/Hall, Ltd. (DHL) purchased property from a trustee. She took back a mortgage on the property to secure the purchase price, but agreed to subordinate her lien to three mortgages securing Graham Mortgage Corp. (Graham). After DHL defaulted on the trustee's note, she sued Graham to set aside her subordination agreements on the grounds that they had been procured by fraud. Graham then called upon its title insurance company, Lawyers Title, to defend the suit. Lawyers Title filed a declaratory judgment action, seeking a ruling that the company had no duty to defend Graham.

The complaint by Lawyers Title made broad allegations that DHL, its partners and/or Graham had perpetrated the alleged fraud. Lawyers Title argued that these allegations brought the claim within policy exclusion 3 (a), which excludes coverage of title defects "created suffered, assumed or agreed to by the insured claimant." The Court disagreed because the phrase "and/or" could be read to say that DHL and its partners had perpetrated the fraud, but Graham had not. Since the policy would cover Graham if it were innocent of the fraud, Lawyers Title had a duty to defend.

The Lawyers Title court then turned to whether Lawyers Title had a duty to defend non-covered claims alleged in the complaint. The Court held, "the rule in Texas is clear: 'If a complaint potentially includes a covered claim, the insurer must defend the entire suit.'" The reasons for this rule, according to the Lawyers Title court, are the difficulty of pro-rating defense costs between covered and non-covered claims and the impracticality of having separate defense counsel represent the policyholder for different claims in the same suit.

These cases illustrate risks inherent in a title insurance company's obligation to defend the insured. A litigant who pays his own legal fees has an incentive to settle, but this incentive is lacking if an insurance company is paying the lawyers. The company may buy its way out of the duty to defend, but the price of the buyout may be the full policy amount (See, e.g., **Fleishour v. Stewart Title Guar. Co.**, *2010 U.S. Dist. LEXIS 101867, E.D. Mo. Sept. 28, 2010*). In many jurisdictions, as in Texas, the company must defend all of a plaintiff's claims against the insured, even if only one of the claims would be covered by the policy.

The lesson in these cases for underwriters is well known: beware of insuring titles that are subject to known litigation risks.

An implication for claims administrators and coverage counsel is to identify cases where defense costs could spiral out of control and look for settlement opportunities. Claims under owner's policies appear to be riskier in this regard than claims under loan policies. In the author's experience, owners generally are inclined to insist on the title they bargained for, while lenders are generally willing, if not obligated, to accept an indemnity payment.

Another implication for claims administrators and coverage counsel is to be mindful of local law, and exercise judgment, in considering whether to defend less than all of a plaintiff's claims against a policyholder.

Irrespective of the policy terms, state law may obligate the company to defend the entire suit. And, even if the company is not obligated to defend the entire suit, that might prove to be the wiser course of action. ■

The lesson in these cases for underwriters is well known: beware of insuring titles that are subject to known litigation risks.

Mr. James Bruce Davis is an attorney and shareholder at Bean, Kinney & Korman PC, in Arlington, Va. He represents title insurance companies in coverage matters and serves as appointed defense counsel in litigation affecting real estate titles. He can be reached at *bdavis@beankinney.com*.

Fidelity Posts Strong Fourth-Quarter 2010 Financial Results

Fidelity National Financial's title segment posted its strongest earnings in several years during the fourth quarter of 2010, the company reported.

Fidelity National Title Group generated $207.2 million in pre-tax earnings during the last three months of 2010, compared to earnings of $110.8 million during the same period in 2009. Meanwhile, Fidelity's title group reported pre-tax earnings of $491.0 million in 2010, compared to earnings of $372.9 million during 2009.

"The title insurance business experienced strong refinance volumes due to the low mortgage interest rate environment, and we continued to closely manage our expense levels, producing our strongest title earnings and pre-tax margin in a number of years," said Bill Foley, Fidelity National Financial's chairman. "The fourth quarter was particularly strong with a 13.8 percent pre-tax margin. Despite a potentially more challenging environment, we are focused on producing strong title insurance earnings in 2011."

Direct orders opened increased from 550,600 to 611,300 from the fourth quarter of 2009 to the fourth quarter of 2010. Meanwhile, closed direct orders increased from 400,600 to 471,900 during the same period. For 2010, Fidelity's direct operations opened 2,385,300 orders, while closing 1,574,300 orders.

During the fourth quarter, Fidelity reported $420.9 million in premiums generated through its direct operations, up from $353.2 million during the same period in 2009. This compares to $654.4 million in title premiums generated through its agency channel during the last three months of 2010, up from $638.2 million during the fourth quarter of 2009.

Randy Quirk, chief executive officer of Fidelity National Title Group, said the company is evaluating premium splits on a state-by-state basis, making changes based on agent profitability and the quality of the relationship. In New York, Fidelity's premium split will change from 85/15 to 80/20 beginning April 1. Similar changes have already occurred in many Western states, as well as Georgia, Michigan and Minnesota.

"It's something we need to do in order to continue to provide the quality support, services and product to our agents, and we believe that will work out well for us and for our agents," Quirk said. "So, we continue to make that analysis on a case-by-case basis. We continue to move to other states and take a look at the viability of the relationships."

Fidelity reported strong growth in its commercial line as it generated $99.4 million in revenue during the fourth quarter of 2010, up from $60.7 million during the fourth quarter of 2009.

"It's not quite the distressed situation you might otherwise have thought about a couple of years ago," Foley said. "It's appreciating assets and assets that have their debt paid down that are getting refinanced. So it's probably the healthiest sector right now. It appears to us that the demise of commercial business was overdone. It's come back."

St. Louis County Offers e-Recording

E-recording is now available at the St. Louis County, MO., Recorder of Deeds office, according to St. Louis County Recorder of Deeds Janice Hammonds. St. Louis County has partnered with eRecordingPartners.net to give customers the option of electronically transmitting documents instead of delivering paper copies. Four vendors have been approved by the county. They include ePN, Ingeo, Mobilis Technologies and Simplifile. Many different instruments are authorized for electronic transmission.

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Florida Defalcation Ends in Death of Agent Who Spent Years on the Run

The death of a man who once led one of the country's largest title agencies handling lucrative commercial deals in South Florida before disappearing more than two years ago with millions in escrow money missing provided a valuable lesson to the industry.

Roger Gamblin, who along with his wife owned Flagler Title in West Palm Beach, was captured in December by the FBI in Colorado. The Gamblins were indicted in September 2009 on charges of wire and mail fraud and conspiracy to commit wire and mail fraud for allegedly stealing about $10 million from their clients' escrow accounts between 2005 and 2008.

Michael Glass, president of Universal Land Title, competed against Flagler Title in West Palm Beach and surrounding markets. Glass said the message learned from this story is crystal clear.

"We as title professionals have a fiduciary responsibility when we are entrusted to safeguard other parties' funds within any transaction," he said. "If we ever make the mistake of thinking we can misappropriate those funds for personal gain, there is no place to hide. You will ultimately be caught and be brought to justice."

Robert J. Kanjian, president of West Palm Beach-based Title Matters, agreed with Glass that title agents who take from their escrow account will eventually face repercussions.

"Our industry has been rocked by the downturn in the real estate industry in general," he said. "We have had a significant spike in defalcations. If you take from your escrow account for a long enough period, unless you keep expanding and the market stays hot, you will never get away with it. That should be enough reason not to do it, if for some reason the moral and ethical imperatives were not enough already."

Flagler Title's underwriters at the time, Chicago Title and Lawyer's Title, covered the losses. Erika Meinhardt, president, Fidelity National Title Group, Inc. – National Agency Operations, said that while the Gamblins controlled millions of dollars in title business at one point, a tainted legacy remains.

"He left behind a once loyal, but now angry and devastated employee base," she said. "He robbed dozens of customers who had trusted him with their real estate transactions and their money, leaving his underwriters that had supported him for over 25 years to step in, pick up the pieces, and take care of the devastation.

"We have a zero tolerance policy with agents who fail to properly reconcile their escrow accounts, avoid audits, don't record documents timely and don't remit their premiums. Unfortunately, that too is part of Roger's legacy," Meinhardt concluded.

After disappearing, the Gamblins remained on the run for two and a half years living as Ron and Nancy in a remote part of Durango, Colo., until Gamblin checked into a hospital with heart trouble in December. A doctor scanned his pacemaker to retrieve programmed information, learned his patient's true name and called authorities. The couple was sent back to Florida and appeared Jan. 5 in federal court in West Palm Beach. Roger died suffering from heart problems and other complications. His wife, Peggy, remains in custody and still faces the same federal charges.

Glass said Gamblin's death brings a tragic end to a long and very difficult title insurance story.

"There was certainly surprise throughout the industry when the Gamblins were located outside Durango," he said. "It had long been speculated that they were relaxing on a beach somewhere in South America. Of course the big question remains, 'Where's the money?' With Roger's passing we may never know the entire story but it has certainly left a trail of rumors and unanswered questions here in the South Florida title insurance market place. Hopefully, one day those answers will be revealed."

FHA Terminates Agreements With 15 Originators

The Federal Housing Administration terminated agreements with 15 originators and seven underwriters approved for mortgage insurance from the Department of Housing and Urban Development, according to a recent Federal Register.

HUD can relinquish federal backing to mortgagees that have a default and claim rate exceeding both the national average and 200 percent of the average default and claim rate in the pertinent geographic area. HUD also can terminate underwriters under the same criteria; however, the default and claim rate must be above 250 percent of the geographic average.

The FHA pulled HUD approval from the following mortgage companies:

- Access Mortgage Services Inc. of Woodbridge, N.J.
- Equity Source Home Loans of Lakewood and Morganville, N.J.
- Valor Financial Services of Rolling Meadows, Ill.
- Metro Finance Corp. of Aurora, Ill.
- Benefit Funding Corp. of Beltsville, Md.
- Equitable Trust Mortgage Corp. of Baltimore, Md.
- Birmingham Bancorp Mortgage Corp. of West Bloomberg, Mich.
- MVB Mortgage Corp. of Southfield, Mich.
- Moncor Inc. of Wheat Ridge, Colo.
- Homeland Lending Inc. of Plant City, Fla.
- Freedom Mortgage Corp. of Fishers, Ind.
- Dedicated Mortgage Associates of Hudson, N.H.
- Anchor Mortgage of Las Vegas, Nev.
- Signature One Mortgage of Las Vegas, Nev.
- First Performance Mortgage Corp. of Bessemer, Ala.

Birmingham Bancorp Mortgage Corp. and MVB Mortgage Corp. also had their direct endorsement approval revoked. Other underwriters who had their direct endorsement approvals revoked include CMG Mortgage Inc. (San Ramon, Calif.), NTFN Inc. (Plano, Texas), Pine State Mortgage Corp. (Atlanta, Ga.), Popular Mortgage Corp. (Hialeah, Fla.), and Universal Mortgage Corp. (Mequon, Wis.). Universal was terminated in both the Indianapolis and Chicago jurisdictions under HUD.

Loan Fraud Rises in Latest FinCEN Report

Suspicious activity reports (SARs), characterized by filers as indicating possible mortgage loan fraud (MLF), increased 2 percent to 16,693 in the third quarter of 2010, up from 16,339 MLF SARs in the 2009 third quarter, according to the Financial Crimes Enforcement Network (FinCEN) third-quarter 2010 mortgage fraud report.

The report indicated that the total number of SARs for all categories filed during the quarter increased 2 percent to 175,717, up from 172,125 filed in the 2009 third quarter. In all, 9 percent of all SARs filed in the 2010 third quarter indicated MLF as an activity characterization, the same percentage reported in the third quarter of 2009.

The key findings in the report indicate that California and Florida had the highest number of subjects, followed by New York and Illinois. Based on subjects per capita, Florida and California switched places in the first and second place rankings, while Nevada and Arizona replaced New York and Illinois as third and fourth highest per capita.

MBA Adjusts 2011 Origination Volume Prediction

The Mortgage Bankers Association predicts loan origination volume for single-family loans will fall to $966 billion in 2011. This is 35 percent lower than 2010. The last time total mortgage originations were as low was 1997, when they totaled $833 billion. The weakness is expected to continue next year, when they are projected at $976 billion.

Purchase originations are projected to rise to $614 billion from $473 billion last year, but refinancings are expected to slide 66 percent to $352 billion. Refinance share of the total market is seen shrinking to 36 percent this year from 69 percent last year.

Several factors resulted in the MBA readjusting its forecast. The association predicts that overall home sales will inch down 0.1 percent during the year. Sales of existing homes will fall 1 percent to 4.82 million, and new home sales will rise 10 percent to 358,000. The MBA attributes the sales decline mostly to slow economic recovery and high unemployment.

Old Republic Reports 2011 Earnings

Old Republic International's title business continued to reflect the more positive operating momentum that first emerged in the second quarter of 2009 as it reported pre-tax income of $9.4 million in 2010.

This is up from a gain of $2.1 million in 2009. The company's title division reported income of $8.3 million during the fourth quarter of 2010, up from $1.5 million during the same period in 2009. Fourth-quarter results were penalized about $4 million due to an uncollectable account.

The company reported growth in 2010 premiums and fees benefited from market share gains emanating from title industry dislocations and consolidation. The inclusion of accounts from the joint underwriting venture with The Fund formed in mid-2009 also added to the year's revenue stream.

According to Old Republic, 2010 claim ratios were relatively stable even though moderate additions to reserve levels continued to be made in consideration of evolving claim emergence trends. Production and general operating expenses reflected the greater costs associated with much higher premium and fee levels and the inclusion of expenses contributed by the Florida venture.

Old Republic's claims ratio for 2010 was 8 percent, compared to 7.9 percent in 2009. In the fourth quarter of 2010, the company reserved at a rate of 8.4 percent, compared to 8.6 percent during the fourth quarter of 2009.

Fraud Unit Created in Minnesota

A Civil Frauds Unit has been created in Minnesota with the responsibility of combating financial fraud, including mortgage fraud and bank fraud. U.S. Attorney for Minnesota B. Todd Jones announced in February that the new unit will work closely with the criminal division to halt on-going criminal fraud and freeze assets before indictments are filed, pursuant to the Anti-Fraud Injunction Act. Moreover, the unit intends to collaborate with the Civil Division's Asset Forfeiture Unit to freeze and seize money in pending criminal fraud cases for use as restitution to victims.

Title Industry Veteran Launches New Operation

Leslie Rennell, former president and CEO of Cleveland-based Resource Title Agency Inc., has announced the formation and launch of Resource Title National Agency Inc., which has purchased some of the business assets of Resource Title. Rennell will serve in the role of owner and CEO of Resource National.

Resource National is an independent, family-owned agency providing full title insurance and escrow services. The company provides national lines of service in commercial, REO/default and relocation markets, as well as traditional title and settlement services in Ohio and nationwide.

"We will adopt Resource Title's traditional focus on meeting customer needs efficiently and quickly," said Rennell. "We will be committed to using technology, experience and the work ethic of our team to be flexible and receptive to the expectations of our clients."

Stewart Announces Milestone in Electronic Title Policy Generation

Stewart Title Guaranty Co. announced more than two million policies have been produced by title agencies utilizing the Stewart Title Electronic Policy System (STEPS). Using STEPS allows title agencies to create title policy jackets online.

"The widespread adoption and usage of STEPS is just one example of the technology support and advanced systems we offer our agency network," said George Houghton, executive vice president, Agency Services Group for Stewart Title Guaranty. "We continue to move the real estate transaction online, and are looking forward to unveiling many additional underwriter technologies and services to help our agencies improve their efficiencies and increase their revenue and at the same time reduce our costs."

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Day Title Services, Inc.

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Land Title Guarantee Company

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Kurt Pfotenhauer
American Land Title Association

EMERALD
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Kelley Williams
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Education with a Twist

When I was told that ALTA's incoming President, Anne Anastasi, had asked me to chair the Education Committee, I found myself excited about a new opportunity while feeling a bit of that "déjà vu all over again" syndrome. I became active in the Maryland Land Title Association (MLTA) in 1993 by joining the Education Committee. In short order, I found myself chairing the Committee. During the past 10 years, I've learned certain precepts are incorrect, most notably that education must be dry or boring in order to be informative. In Maryland, we incorporated our subject matter issues into dramatic (or comedic) presentations as well as game-show formats. Interestingly, the feedback we received indicated that not only did the membership enjoy, but they also learned – in some cases even more than at an hour long "talking-heads" presentation. As a long time talking head myself, I can appreciate the need for diverse formats – my only point here is that education can be both fun and informative.

Somewhere along the line, I was asked to join ALTA's Education Committee. I can only guess it was based in part on my prior accomplishments. I am still not sure whether Anne asked me to lead the Committee because of my reputation for being innovative, or because she enjoyed my song-and-dance presentation several years back in Pennsylvania. Whatever the reason, I am enthusiastic about this opportunity to lead an outstanding group of volunteers on this Committee.

I have two main goals for my tenure. First, to incorporate some of the innovative programming we had in Maryland (and offerings that other LTAs have been successful with) into some of the ALTA educational offerings. And second, to take our Committee from the back room and put it in front of the membership.

Last year's Business Strategies Conference in St. Louis was the Education Committee's first attempt at dipping its big toe into the icy waters of innovation. A "Red Flag" skit illustrated various snafus that can occur before, during and after a real estate settlement. We gave an encore presentation at last year's Annual Convention. Based upon the success of these two venues, the Committee decided to utilize a game-show format at the upcoming Business Strategies Conference in Las Vegas. This program will again utilize the talents of several members of the Committee, will involve the members of the "audience," and will prove that we can learn and have fun at the same time. From the "Title Bowl Challenge" offered by the Education Committee, to the various other sessions focused on growing your business, management and leadership advice, regulatory and compliance issues, and technology advancements, there will be something for everyone no matter your interest. Many of these sessions offer CE/CLE credits in several states, while providing a venue to network and learn from industry experts. You can register at *www.alta.org/meetings*.

I hope to see many new and familiar faces in Las Vegas. Whether you attend or not, please communicate to your Education Committee things we can do to bring more value to your membership.

Eric Schneider,
Chair of ALTA's Education Committee

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