

July 2011

Official Publication of the  
American Land Title Association

# TitleNews

## Top 10 Lawsuits Impacting the Title Industry

Court Decisions from Around the Country  
Every Title Operation Should Know About



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July 16 - 18	Title Agents Executive Conference Park City, UT
September 18	Agents & Abstracters Forum Baltimore, MD
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## STATE CONVENTIONS

July 18 - 20	Michigan
July 21 - 22	Illinois
August 4 - 6	Kansas
August 11 - 12	Minnesota
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September 15 - 17	Dixie Land (AL,GA,MS)
September 15 - 17	North Carolina
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September 21 - 23	Nebraska
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November 2 - 4	Florida

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## Uncertainty Mounts as Financial Overhaul Drags Along with Missed Deadlines

**T**wenty times taller than the Statue of Liberty and 15 times longer than “Moby Dick,” the colossal Dodd-Frank Wall Street Reform and Consumer Protection Act would take the average reader more than a month to read.

As we come up on the one-year anniversary of passage of the Dodd-Frank Act, more than two dozen of the legislation’s rules are behind schedule. With no end to the wrangling over details in sight, the failure to finalize rules required by the legislation is contributing to market uncertainty and ultimately delaying any sustained economic recovery.

Nearly two thirds of the 387 sets of rules required by the law haven’t even been proposed, according to law firm Davis Polk & Wardwell. Through June, not a single U.S. agency met any of the 28 Dodd-Frank-related deadlines set under the law. Of the new rules to be written, regulators have completed only 24 requirements.

Without any delays factored in, a Morgan Stanley report predicts the new regulations will depress the return on equity for the financial industry by 4 to 6 percent. Banks will have to take out 6 to 8 percent of their costs in the next 12-18 months to offset the impact of new regulations. The net cost once all is said and done will be substantial.

The Consumer Financial Protection Bureau (CFPB), a significant piece of the reform, isn’t expected to be ready by the end of July, but already has burned through \$36 million in expenditures through March. The CFPB still does not have a director as Senate Republicans continue to hold up all nominees until the White House agrees to reforms at the nascent consumer agency, such as replacing the director with an FDIC-like board. With Senate Republicans intent on preventing a recess appointment, it is likely the CFPB will open its doors without a leader. Equally important as who will head the CFPB is who will staff the new agency. Currently, the CFPB has about 200 staffers, of whom 50 are on a temporary assignment. Another 300 are expected to transfer from other federal agencies, but that is still a far cry from the 1,500 staffers the agency is expected to have when fully operational.

The Dodd-Frank Act has been called Sarbanes-Oxley on steroids. With the sheer number of rules still in the pipeline, it’s inevitable agencies will miss an increasing number of deadlines over the next year, resulting in more confusion in the market.

ALTA continues to work with regulators to craft rules that make sense, but the volume of complex rules will make it a sticky wicket to navigate.



A handwritten signature in black ink that reads "Kurt Pfothauer". The signature is fluid and cursive, with a long horizontal line extending from the end.

– Kurt Pfothauer  
Chief Executive Officer, ALTA

*Katie Andrews*  
*Florida Agency Operations*



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## CFPB Releases First Prototypes of Combined Mortgage Disclosure Form

In May, the Consumer Financial Protection Bureau (CFPB) released initial drafts of the combined mortgage disclosure form that combines the Truth in Lending Act (TILA) disclosure and the Real Estate Settlement and Procedures Act's Good Faith Estimate (GFE).

The CFPB expects to conduct revisions through September to select a single draft disclosure and then refine it. Changes to the draft form will be posted to CFPB's website, [www.consumerfinance.gov](http://www.consumerfinance.gov),

throughout the summer in order to receive feedback. The agency also plans to test the form in six markets: Albuquerque, N.M.; Baltimore; Birmingham, Ala.; Chicago; Los Angeles; and Springfield, Mass.

Prototypes for a new HUD-1 Settlement Statement are expected in the months ahead. ALTA's RESPA Task Force will continue to work with the CFPB as it continues to modify the form. ALTA will provide further analysis of the draft forms in a coming edition of TitleNews.

## Proposed Executive Order Could Impact Title Companies Awarded Government Contracts

A draft Executive Order would require government contractors to publicly disclose their political contributions.

If implemented, the draft Executive Order would apply to all companies seeking to do business with the federal

government, and would go far beyond the current disclosure requirements for contributions to political candidates and their parties. This could impact title companies awarded contracts by HUD. ALTA will follow this development.

## ALTA Promotes Ailes to Vice President of Government Affairs

Justin Ailes was promoted to Vice President of Government Affairs for ALTA, and in his expanded role will be responsible for all of ALTA's government relations efforts



including federal and state government affairs, legislative and regulatory advocacy, legal issues, political action committee (TIPAC) and grassroots engagement.

"I'm humbled and grateful to be recognized by people that I admire and I'm proud to be a part of the ALTA team," Ailes said. "ALTA will continue advocating for the safe and efficient transfer of real estate, insisting on high standards when searching land title records and preparing insurance documents."

Before joining ALTA, Ailes was deputy federal representative for Indiana Gov. Mitch Daniels. In that capacity, he worked with the federal government, Indiana's congressional delegation, state agency

heads and the governor's policy staff to promote the governor's federal priorities. He served as a registered lobbyist and liaison between the federal government and state of Indiana.

"Few I have known have ever worked harder or more aggressively than Justin to achieve his objectives," said Kurt Pfofenhauer, chief executive officer for ALTA. "His natural talent, which has flowered over the past year, is now widely acknowledged in Washington, D.C., circles where he is seen by his peers as a respected leader."

Ailes formerly served as a staff member for U.S. Sen. Richard Lugar and legislative assistant in the Indiana State Senate. He received his Bachelor of Arts degree from the University of Indianapolis, where he majored in Political Science and International Relations.

## GAO Report Addresses Foreclosure Documentation Problems

A report recently issued by the Government Accountability Office (GAO) titled "Documentation Problems Reveal Need for Ongoing Regulatory Oversight," concludes that federal law does not govern the foreclosure process, and regulators did not oversee these practices because they were not thought to be high risk for the banks.

"Although various federal agencies have authority to oversee most mortgage servicers, past oversight of their foreclosure activities has been limited, in part because banking regulators did not consider these practices as posing a high risk to banks' safety and soundness, and some servicers have not been under direct federal oversight," the GAO said in its report.

The GAO recommended the new Consumer Financial Protection Bureau include proper foreclosure practices in upcoming national servicing standards and urged the regulators to assess the risks documentation problems pose for the institutions they oversee.

It should be noted the

report does not address alleged legal title or title insurance problems stemming from the robo-signing and foreclosure documentation problems.

A contingent of ALTA members met with GAO officials in December to share industry practices when insuring a real estate-owned transaction and the effect foreclosures have on the process. ALTA members who met with the GAO included Craig Page of the California Land Title Association, Bill Burding of Orange Coast Title, Celia Flowers of East Texas Title Companies, Kevin Eichner of First American Title Insurance Co., Ken Jannen of First American Title Insurance Co., Ted Rogers of Security Title Guarantee Corp. of Baltimore, Joe Reinhart of Fidelity National Title Insurance Co., Josh Reisetter of Brookings County Abstract, Kay Creasman of Old Republic National Title Insurance Co. and Landon Smith of Stewart REO Asset Solutions.

ALTA will continue to monitor the report to see how it is viewed in Washington, D.C., and at the state level.

## HUD Issues Guidance for \$100-down Financing Program for REOs

The Department of Housing and Urban Development (HUD) recently announced guidance on acquisition costs that can be financed for eligible homebuyers purchasing a HUD Real Estate Owned (REO) single-family property using the sales incentive that requires a \$100 minimum cash investment.

Pursuant to Mortgagee Letter 2011-19, an eligible borrower may finance the cost of the upfront mortgage insurance premium (UFMIP) through his or her FHA-insured mortgage as long as the total mortgage amount, including the UFMIP, does not exceed 100 percent of the "as is" appraised value of the property. The borrower may not finance prepaid expenses or financing/closing costs through the FHA-insured mortgage.

Approved borrowers acquiring HUD REO properties under any such initiative are not eligible to finance prepaid expenses and financing/closing costs through their FHA-insured mortgage.



### EXAMPLE

The current appraisal used to determine the original listing price is \$100,000. After 90 days, FHA reduces the listing price of the unsold unit to \$90,000. FHA accepts a bid from an eligible homebuyer for \$95,000. The homebuyer qualifies for both FHA financing and participation in the \$100 down payment program. Closing costs and prepayments equal \$2,375 and the UFMIP is \$949 (1.0 percent of the (\$95,000 - \$100)).

In this example, the maximum FHA loan amount the homebuyer can receive is \$95,849 (\$94,900 in remaining principal, plus UFMIP (\$94,900 x 1 percent, or \$949). If the homebuyer receives no other subsidies, cash at settlement required from the homebuyer is \$2,475 (\$100 down payment + \$2,375 in closing and prepayment costs) in order to purchase the property.



## First-Quarter 2011 Title Insurance Premiums Up 8.7 Percent

ALTA reported title insurance premiums written during the first quarter of 2011 increased 8.7 percent when compared to the first quarter of 2010.

According to ALTA's 2011 First-Quarter Market Share Analysis, the title insurance industry generated \$2.25 billion in title insurance premiums during the first three months of 2011. This is up from \$2.07 billion in title insurance premiums written during the same period a year ago.

Overall, 41 states and the District of Columbia reported increases in title insurance premiums written during the first three months of 2011 when compared to the same period in 2010. Alaska, Kansas and West Virginia

all experienced more than a 30 percent jump in title insurance premiums written during the first quarter of 2011 versus the first quarter of 2010.

In terms of market share, the Fidelity Family of title insurance underwriters captured 33.7 percent

of the market during the first quarter of 2011, while the First American Family garnered 27.7 percent, the Old Republic Family recorded 13.5 percent and the Stewart Family had 12.5 percent. Meanwhile, regional underwriters held 12.6 percent of the market

during the first quarter of 2011, up from 10.7 percent market share during the same period a year ago.

ALTA expects to release its second-quarter 2011 Market Share Analysis around Sept. 1.

### First Quarter 2011 Preliminary Market Share Analysis: Top 10 States

State	Premium Written		% Increase/ Decrease
	3/31/2011	3/31/2010	
1. California	\$307,072,647	\$301,052,447	2.00%
2. Texas	246,232,912	201,457,514	22.20%
3. New York*	164,967,165	140,131,683	17.70%
4. Florida	159,349,254	150,343,802	6.00%
5. Pennsylvania	110,217,321	87,995,068	25.30%
6. Arizona	77,713,322	83,104,091	-6.50%
7. New Jersey	76,492,988	76,243,583	0.30%
8. Ohio	73,924,351	65,839,399	12.30%
9. Michigan	68,102,492	59,824,726	13.80%
10. Virginia	63,396,311	68,787,672	-7.80%

\* One company in that state is estimated.

## ALTA Staff Participates in Habitat for Humanity Project

On June 1, ALTA staff joined the First American Community Fund to help in a Habitat for Humanity project to rehabilitate the Perry S. Hall Apartment building in Arlington, Va.

Perry Hall, a former Section 8 property, was slated to be torn down in 2005 and rebuilt as market-rate apartments. To address Arlington County's affordable housing crisis, Habitat for Humanity

of Northern Virginia intervened, bought the property and made plans to rehabilitate the existing building and preserve the structure of Perry Hall.

Renovation of the property required complete demolition of the interior of the building and an expansion of its footprint. Through a complete renovation of all systems within the home, Habitat staff and volunteers



will convert the unit, formerly nine apartments, into 12 three-bedroom condominium units.

ALTA staff that helped in the project included

Michelle Korsmo, Kelly Romeo, Cornelia Horner, Erica Hampton, Taylor Morris, Deirdre Green, Lauren Dollerschell, Steve Gottheim and Ronnie Streff.

# Top 10 Lawsuits Impacting the Title Industry

Court Decisions from Around the Country Every Title Operation Should Know About

**A** mortgage market scuttling along the bottom mixed with complex legislative and regulatory changes continue to create difficult operating conditions for title companies. An active judicial system constantly scrutinizing the title insurance industry provides another Molotov cocktail, as several court cases handed down over the past year could severely impact the title insurance industry.

To keep members abreast of what's happening in court rooms across the country, ALTA's Title Counsel Committee members provided a synopsis of 10 lawsuits they believe have significant ramifications on the title insurance industry. >>



The Title Counsel met at ALTA's Business Strategies Conference in May and reviewed hundreds of lawsuits before whittling the list down to 10. Cases range from issues dealing with closing protection letters and captive title insurance agreements to those focusing on mortgage fraud and foreclosures involving MERS. Members of Title Counsel providing the summaries include Marjorie Bardwell, Fidelity National Title Group; Edward Hellewell, Stewart Title Guaranty Co.; Rich Carlston, Miller Starr Regalia; Ella Gower, Miller Starr Regalia; Bruce Davis, Bean, Kinney & Korman; and Christopher Fields, Carlton Fields.

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

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

### **Wells Fargo Bank, N.A. v. Old Republic Title Ins. Co.**

*Case No. 10-1087, 2011 U.S. App. LEXIS 4030 (E.D. Va. March 1, 2011) (unpublished opinion)*

**Facts:** An originating lender and closing agent engaged in a scheme to defraud the warehouse lender by creating fictitious loans, failing to pay off prior mortgages, and failing to record the mortgages purportedly securing the loans sold to the

warehouse lender. The warehouse lender sued the title insurer for, among other things, breach of closing protection letters and fraud, claiming the closing agent was acting as title insurer's agent for purposes of the closings. The Virginia District Court granted the title insurer summary judgment in 2009.

**Holding:** The Fourth Circuit recently affirmed the District Court's grant of summary judgment, holding that the title insurer was not the principal of the agent for purposes of the closings and that the title insurer was entitled to the same defenses of fraud against the warehouse lender's claim for breach of the closing protection letter that it would have had against the originating lender. The Fourth Circuit held that the agency agreement between the title insurer and the closing agent was not ambiguous merely because it both expressly limited the scope of the agency to exclude "escrow, closing or settlement business" and required the agent to record documents necessary to insure the interest. It also adopted the District Court's reasoning that the warehouse lender stood in the shoes of the originating lender and that the insurer was thus entitled to the same defense of fraud against the warehouse lender that it would have had against the originating lender.

**Relevance to the Title Industry:** Subsequent lenders' claims based on the loan originator's fraud are still prevalent and they will be working their way through the courts for the next few years. This case is important because it affirms the limited scope of a title agent's agency and the unambiguous language of the title agency agreement and also sets an important limitation on closing protection letter claims where the

insurer elects not to issue a policy based on the closing agent's fraud.

### **Lee et al v Fidelity National Title Insurance Company**

*2010 Cal. App LEXIS 1611*

**Facts:** The commitment referred to two assessor parcels by number. Attached to the commitment and policy was a map that showed both parcel numbers, with arrows pointing to the parcels and the disclaimer that the map was for location purposes only and not a survey. It does not appear that a survey was prepared until the current resale of the property. It does appear that the taxes on the other parcel were assessed (since 1978) to the same grantor by error. Subsequent research indicated the title to that parcel was not held by the insured or its predecessors. The metes and bounds description in the commitment and policy only described one parcel. The trial court found that the policy covered only the single parcel as contained in the legal description.

**Holding:** The court of appeals reversed and held that although the legal description in Schedule A clearly only covered one parcel, and despite the fact that the parcel numbers were not incorporated into the terms of the policy, the legal description (which the court held required professional training to decipher) was ambiguous to a layperson and therefore the ambiguity was to be held against the insurance company. The expectation of coverage, as presumed by the references to both parcel numbers and the inclusion of a map with both parcels indicated, rendered the limitation of the actual legal description ineffective.

**Relevance to the Title Industry:**

We often include the street address, tax or assessor parcel information and other references in our commitments and policies for the convenience of our customers. This case reminds us that those parties may be relying on that general information for other purposes and we should be careful that the information provided is not in conflict with the coverage we are providing.

**Denise Edwards v. First American Corporation, et al.**  
*610 F.3d 514 (9th Cir. 2010)*

**Facts:** This case arises from a motion to dismiss for lack of standing. Denise Edwards, a home purchaser, filed a class action lawsuit contending that First American's "Captive Title Insurance Agreements" constituted a violation of RESPA. Edwards alleged that First American paid cash and securities to an agent in return for the agent's agreement to refer all future title insurance business exclusively to First American. Despite the fact that, under Ohio law, all title insurers are required to charge the same premium, so that there was no claim of overpayment, Edwards sued claiming that the business relationship between First American and its agent violated RESPA in that it constituted the payment of a thing of value in exchange for business referrals and constituted an improper fee splitting structure. First American argued that Edwards lacked standing because she did not suffer concrete injury in fact, because she did not allege that the charge for title insurance was higher than it would have been without the exclusivity agreement. Edwards argued that she had standing under RESPA whether or not an actual overcharge occurred.

**Holding:** The 9th Circuit, following the 3rd and 6th Circuits, found standing. Citing to the RESPA prohibition of the payment of any fee, kickback or thing of value in exchange for business referrals, the court held that whenever a violation occurs, the defendant is liable to the person who was charged for the settlement service in an amount equal to three times the amount of any charge. In light of the court's interpretation of the statute, it held the Edwards had standing to pursue her RESPA claim.

purporting to be an officer under the forged articles. Trustee in bankruptcy claimed the deed was fraudulent and purchaser (debtor) was not a Bona Fide Purchaser (BFP).

**Holding:** Both the bankruptcy court and the court of appeals held that the deed to the debtor was not void, but voidable and therefore the BFP for value without notice will take good title. The court recognized that to hold otherwise would undermine the ability of third parties to rely on the public record (in this case the corporate filings). The court refused

## The decision in the Edwards v. First American case could result in increased litigation and regulatory scrutiny.

**Relevance to the Title Industry:**

The split among the Circuit Courts of Appeal continues, with the 9th Circuit joining the 3rd and the 6th Circuits in holding that an overcharge is not a prerequisite for standing under Section 8 of RESPA. The decision is likely to result in increased litigation and regulatory scrutiny.

**Scotch Bonnett Realty Corp. v Cateania Matthews et. al.**

*Misc. No. 4, September Term, 2010 Court of Appeals of Maryland, 2011 Md. LEXIS 4; certified question Inre Mathews, 2010 Bankr. LEXIS 1763 (Bankr. D. Md, May 25, 2010)*

**Facts:** Grantor falsified and filed an amendment to articles of incorporation with the state which appeared to give him corporate authority. Grantor then signed deed to debtor, using his own name

to expand the common law holding that a forged instrument did not convey title to include instruments that weren't forged themselves (the signature on the deed was properly executed). Maryland law distinguishes between a forged deed and a deed obtained by false pretenses.

**Relevance to the Title Industry:**

We are seeing an increase in this type of scam. The articles of incorporation or Limited Liability Company (LLC) filings are being falsified or forged. This case is an excellent balance of the conflict between the rights of the defrauded company (often by an insider to that entity) and the innocent BFP. The difference between void (often termed "Void ab initio") or merely voidable is the threshold question for the status of a BFP under many state law recording acts.

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## Fifth Third Mortgage Company v. Chicago Title Insurance Company

*758 F.Supp.2d 476 (D.C.S.D Ohio 2010)*

**Facts:** Chicago Title Insurance Company, through an agent, insured Fifth Third Mortgage Company's mortgage. Various title defects which were created by the fraud of Chicago Title Insurance Company's agent arose, and Fifth Third Mortgage filed a claim for indemnity and defense relating to litigation involving the priority of their lien. Chicago Title Insurance Company denied the claim, asserting, among other things, that it was excused from performing its contractual obligations because of Fifth Third Mortgage Company's failure to follow objectively reasonable underwriting standards when making the loan to the borrower.

**Holding:** The District Court granted Fifth Third Mortgage Company's motion for summary judgment, holding, among other things, that Chicago Title Insurance Company was liable under the policy despite the failure of the lender to comply with its loan underwriting guidelines. The court found that a title insurer has a duty to perform its own title search and that the lender's underwriting guidelines are irrelevant for purposes of the title search pursuant to the express terms of the loan policy.

**Relevance to the Title Industry:** Several courts have now held that underwriting guidelines of a lender are not material to issuing a title insurance policy. (See *Fidelity National Title Insurance Company v. Matrix Financial Services, Corporation* (2002) 255 Ga.App. 874.) As stated by the District Court in the Fifth Third Mortgage Case, "if

the underwriting standards were truly material to (the insurer's) decision to issue the policy, then the policy would expressly state that the lender's underwriting would be subject to (the insurer's) approval."

## Ben Soifer v. Chicago Title Insurance Company

*187 Cal.App.4th 365 (2010)*

**Facts:** A real estate investor, Ben Soifer, brought an action against Chicago Title Insurance Company alleging breach of contract, negligence and negligent misrepresentation. Soifer was in the business of acquiring properties at foreclosure sales. In order to determine if there were liens senior to the lien being foreclosed, Soifer contacted a title agent by email and asked for a quick priority check, holding out the possibility of future business with the title agent. He claimed that he entered into an oral agreement with the title agent in which the title agent agreed to provide title information upon which Soifer could rely in exchange for his placement of business with the title agent. In March of 2008, relative to a property in Encino, Calif., which Soifer sought to acquire through a trustees' sale, Soifer, as was his practice, asked the agent whether the foreclosing loan was the senior lien. The agent responded via e-mail with a "yes," however, the loan was in fact junior to another deed of trust. In an effort to avoid statutory restrictions under California law, Soifer argued that the title agent was providing "abstractor" services under the alleged oral agreement.

**Holding:** The Court of Appeal held that informal e-mail communications were not abstracts of title on which an investor could

sue the insurer in tort or in contract. The court stated that Soifer did not purchase an abstract of title or a title insurance policy, which are the two ways in which an interested party can obtain title information upon which reliance may be placed.

**Relevance to the Title Industry:** This case contains another discussion of the differences between an abstract of title and a preliminary report and the statutory prohibition on reliance on a preliminary report. The case further stands for the proposition that informal arrangements to provide limited title information should not give rise to abstractor liability.

## Nationwide Life Insurance Company v. Commonwealth Land Title Insurance Company

*Civil Action No. 05-281, U.S. District Court for the Eastern District of Pennsylvania, 2011 U.S. Dist. LEXIS 16446.*

**Facts:** In 2001, the owner of a parcel of land within a mall development took out a \$3.5 million loan from Nationwide, which purchased a loan policy from Commonwealth. Issued with the loan policy was an ALTA 9 Endorsement. The Schedule B exceptions included one for a "Master Declaration and Agreement of Easements, Covenants, Conditions and Restrictions, as Amended" and another one for "Declaration of Restrictions and First Amendment." Both exceptions included the dates of the documents and the customary recording information. The borrower defaulted in 2003, and in lieu of foreclosure, it conveyed the property to Nationwide. A purchaser was located and Nationwide contacted the mall owner to obtain approval of the sale. The mall owner did not approve, and the

purchaser refused to complete the purchase of the property. Nationwide submitted a claim to Commonwealth, which was denied, and a lawsuit was filed. The District Court dismissed the litigation against Commonwealth, and Nationwide appealed. The U.S. Court of Appeals for the Third Circuit reversed the District Court and returned the case to the District Court.

**Holding:** The Third Circuit Court found that, to “except expressly” from ALTA 9 Endorsement coverage a right of refusal or other restrictions noted in paragraph 1(b)(2) of the Endorsement, the policy must list those restrictions specifically in Schedule B. It is not enough for the policy merely to list and identify in some part of Schedule B the document or documents in which the restrictions are embedded. The restrictions noted in paragraph 1(b)(2) of the ALTA 9 Endorsement include easements, liens for liquidated damages, private charges or assessments, options to purchase, a right of first refusal or the prior approval of a future purchaser or occupant. The Third Circuit opinion stated “Commonwealth bore the burden of detecting the restrictions stated in the Declaration, and had to list those restrictions explicitly as exceptions to avoid covering loss from them.” Following those guidelines, the District Court found that the policy issued covered, without exclusion, the loss suffered by Nationwide as a result of its inability to sell the subject property. Commonwealth sought reconsideration by the Court, which was denied. However, the Court did approve an appeal with respect to the scope of coverage of the ALTA 9.

**Relevance to the Title Industry:** The ALTA 9 Endorsement and 9 series endorsements are popular and often requested endorsements. The Court’s holding may not be consistent with customary underwriting guidelines. This case suggests that underwriting guidelines may need to be reviewed. Policy issuing agents should confirm the underwriting guidelines and requirements of their insurers before issuing the ALTA 9 series endorsements.

### Gold v. Old Republic National Title Ins. Co.

*Case No. 08-13293,  
(Bankr. E.D. Va. November 24, 2010)  
(unpublished memorandum opinion)*

**Facts:** Title insurers moved to dismiss adversary proceedings filed by the trustee of a debtor who, as the president and sole owner of an originating lender, also a debtor, originated mortgage loans for which closing protection letters, commitments and policies were issued. The debtor and his company engaged in scheme to defraud warehouse lenders by creating fictitious loans, failing to pay off prior mortgages, and failing to record the mortgages purportedly securing the loans sold to the warehouse lender.

**Holding:** The Virginia Bankruptcy Court granted the title insurers’ motion to dismiss. The Bankruptcy Court held that, because the individual debtor committed the fraud and was the sole owner of the originating lender, the claims by the originating lender on the closing protection letters, commitments and policies were barred by the doctrine of in pari delicto. Considering the agency agreements, the Bankruptcy Court also held that debtor’s claims

against the title insurers based on a theory of respondeat superior failed because the closing agent was the agent for the title insurers only for the limited purpose of issuing title insurance, not for purposes of recording the mortgages to be insured.

**Relevance to the Title Industry:** Liability for the mortgage fraud of the last decade is still being allocated by the courts, and it is important that it rest with the parties who committed the fraud. This case is important because it affirms the limited scope of a title agent’s agency with the insurer and shows that bankruptcy courts are unwilling to afford relief to those individuals and companies who participated in mortgage fraud at the expense of title insurance companies.

### StoreVisions, Inc. v. Omaha Tribe of Nebraska, also known as Omaha Nation

*Case No. S-10-280. SUPREME COURT OF NEBRASKA. 281 Neb. 238; 2011 Neb. LEXIS 24. March 25, 2011, Filed.*

**Facts:** This case involves a waiver of sovereign immunity in favor of StoreVisions Inc. (StoreVisions) signed by the Omaha Tribe of Nebraska (Tribe) Tribal Council Chairman and Vice Chairman, and in the presence of five of the seven members of the Tribe’s Tribal Council. StoreVisions, a general contractor, and the Tribe had entered into 11 different agreements relating to expansion of the Tribe’s casino operations. When litigation occurred, the Tribe claimed that the Tribe had not waived its immunity from suit. The pleadings by the Tribe assert that their sovereign immunity could only be waived by a resolution of the tribal



## Title Counsel

The purpose and scope of work of ALTA's Title Counsel is to promote the exchange of information within the ALTA membership about current developments in the law affecting title insurance and conveyancing. The committee establishes an institutional mechanism for sharing views on common legal problems, assists the ALTA's General Counsel in advising ALTA officers and staff on specific legal developments, assists the ALTA General Counsel in providing legal review of publications and other legal documents, acts as a task force on any legal problem facing the title industry which is identified by the Title Insurance Underwriters Section Executive Committee as warranting the committee's consideration, and assists the General Counsel in the development of bulletins to the membership on legal and general underwriting issues of broad concern. If there's a case in your state that you think Title Counsel should review, contact Title Counsel chair Marjorie Bardwell at [marjorie.bardwell@fnf.com](mailto:marjorie.bardwell@fnf.com).

council and not by the independent acts of the chairman and vice chairman of the council. In the suit, the Tribe contends that its bylaws provide no authority to the officers of the Tribe, except those powers delegated to the officers by the tribal council.

**Holding:** The Supreme Court of Nebraska noted that since the Tribe's constitution and bylaws are silent as

to the method of waiving sovereign immunity, it was reasonable for StoreVisions to rely upon the words and actions of the Tribe with respect to the waiver of immunity. This court concluded that the chairman and vice chairman had apparent authority to waive the Tribe's sovereign immunity. The Court held that the immunity waiver was enforceable under the law of principal and agent and the doctrine of apparent authority.

**Relevance to the Title Industry:** Title insurance is increasingly being required for transactions involving Indian tribes. This case underscores the relevance of examining the organizational documents of a tribe – the constitution, charter, bylaws, resolutions, etc. – to determine the procedure for waiver of sovereign immunity if any, and to determine the authorized persons to sign on behalf of a tribe, and then to draft appropriate requirements and exceptions. Commitment requirements and exceptions must be tailored to a tribe's organization and designed to deal with the issues before the transaction closes and avoid policy claims.

### **In re: Ferrel L. Agard** *444 B.R. 231 (Bankr. E.D.N.Y. 2011)*

**Facts:** Prior to Ferrel L. Agard's bankruptcy, U.S. Bank, as loan pool trustee, obtained a foreclosure judgment against him in a New York state court. After filing bankruptcy, Agard asked the bankruptcy court to void the foreclosure. He argued that the bank's only interest in the mortgage was received by way of an assignment from the Mortgage Electronic Registration System (MERS), as "nominee" for the original lender. Agard's argument raised the fundamental question

of whether MERS had the legal authority to assign a valid and enforceable interest in the mortgage. The bankruptcy court ruled on this question because a number of cases before the court presented the same issue.

**Holding:** The bank won, but only because the bankruptcy court had no authority to disturb the prior state court foreclosure judgment. The bankruptcy court went on to rule that a MERS assignment does not transfer a mortgage under New York law. The court reasoned that the secured lender is the only person who has a right to enforce a mortgage. The secured lender is the person who holds the promissory note the mortgage secures. For the bank to prove it was the noteholder, the bank needed to supply proof of a written assignment of the note or to produce the original note, endorsed over to the bank. The MERS assignment was ineffective because MERS never owned the note.

**Relevance to the Title Industry:** While court rulings across the country have varied whether or not MERS can launch foreclosure procedures when it lacks possession of a promissory note, the New York bankruptcy court ruled a MERS assignment is ineffective to transfer ownership of a mortgage or deed of trust. If ownership of a mortgage is in issue, the person claiming to own the mortgage must produce an assignment from the original lender or the original promissory note, and that it's properly endorsed. ■

# Surviving Title Agents Fueled With Ammo for Future Success

More than 200 attendees heard messages about the current state of the industry, what the future holds and the best strategy to succeed during ALTA's 2011 Business Strategies Conference at the Cosmopolitan in Las Vegas.

**A** LTA President Anne Anastasi opened the first day's general session touching on the importance of having Fannie Mae and Freddie Mac remain in the marketplace, and the need to continue sharing the importance of title insurance.

"Without Fannie and Freddie, lending will be consolidated among the top five large banks," she said. "They will look to consolidate the business and may consider self insuring. If this happens, what will happen to the community banks and credit unions? They won't be able to afford money."

She also discussed ALTA's successful lobbying efforts as the U.S. House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises (GSE) recently passed an amendment requiring title insurance for all loans that would be defined as qualified

residential mortgages (QRM). The Dodd-Frank Wall Street Reform and Consumer Protection Act requires the establishment of rules for lenders that securitize mortgage loans to retain 5 percent of the credit risk for loans sold to the secondary market unless the mortgage is a QRM.

Much of the success in getting this amendment was due to meetings ALTA members had with members of Congress during the Federal Conference and Lobby Day in March.

"In D.C., we received understanding nods from the members of Congress when we explained the value of what we do," Anastasi said.

She then encouraged ALTA members to explain the difference between a search and an exam to all who will listen, and share the value of the industry's efforts to fix errors in the public record. "There will never be a computer that can examine," Anastasi said, showcasing the important role title agents play in a real estate transaction.

## Economic Forecast

During the first day's general session, CoreLogic chief economist Mark Fleming indicated the housing



**A** Attendees of the Business Strategies Conference make their way through the Exhibit Hall.

market will remain difficult in 2011. While several housing markets across the country are beginning to recover, home price values will continue to fall throughout the year, he said.

“We need to see if the private sector will return to the market,” Fleming said. “If it doesn’t, we will have to wait for another year.”

Housing and construction pulled the United States out of past recessions. Unfortunately, this time around housing was one of the causes of the economic downturn. Housing starts are at historic lows, while inventory is at historic highs.

Fleming asked the attendees if it felt like the economy was getting better. Most said they didn’t think so.

“It’s because of the lack of jobs,” Fleming said. “Most companies are putting their investments toward computers and equipment, and not creating jobs. Housing typically follows wages, and wages are not

rising. Wages usually follow inflation, unless you have a lot of slack in labor market.”

### ‘Only Way to Get Out of This is to Let People Fail’

Having served as past chairman of The Mortgage Bankers Association and testifying 14 times in front of Congress, David Kittle fully understands the various ingredients that played into the mortgage meltdown.

Sharing his knowledge with attendees during the final general session at the conference, Kittle provided analysis on the amount of negative equity in several markets, offered insight on the state of the lending industry, and how the industry can improve by issuing better loans and reduce fraud.

“We can’t afford to keep bailing people out,” said Kittle, who completed his term as chair of the Mortgage Bankers Association in October 2009. “The only way to get out of this is to let people fail. We are modifying loans for people who never should have received a loan in the

first place.” Kittle began his mortgage banking career in 1978 with American Fletcher Mortgage Company. As a top producing loan officer, he moved to the management side in 1986. He opened his own company, Associates Mortgage Group, in 1994 and sold it in 2006. He now is the senior director of industry relations for IMARC, a fraud investigation company located in Santa Ana, Calif.

Kittle said that too many loans were given to people who never should have been approved.

“We should say ‘no’ more often and tell them ‘Sorry, you don’t qualify,” he said. “I used to tell people ‘no’ and the Realtor would slump. We should be telling these people to work on a few things, pay down debt and then come back.”

Kittle touched on the need for better ethics in the industry. He worked in the title industry for many years as an owner of Calvary Title Company and an agent of Commonwealth Land Title Insurance Co. His father retired from Commonwealth, his wife worked as an underwriter and several of his



▲ Mark Fleming, CoreLogic’s chief economist, provides a snapshot of the U.S. economy.



▲ David Kittle, senior director for IMARC, said the industry must issue better loans.



▲ Syndicated columnist Ken Harney said the industry must provide better transparency.

family members work in the title industry as well.

"I have title business in my blood," said Kittle, whose title agency was a captive. "We automatically gave the reissue rate. It was the right thing to do. This industry didn't always do that. Do you tell your new buyer at the closing or do you ask if they had a policy on a refinance? It's not illegal, but unethical. It's not just the big companies doing things like this. It goes down to the little people. We are all responsible, and at some point we have to look in the mirror and make sure we are doing everything ethically."

Pulling information from Radar Logic and Google Earth, Kittle provided snapshots of several areas regarding negative equity. In a two and a half square mile area in Santa Ana, Calif., there is more than \$300 million in negative equity. In San Clemente, Calif., there is \$277 million in negative equity. In one area near Phoenix, there is \$1.2 billion in negative equity.

"What are the lessons? For every dot, there's a family. They are friends and our customers lying in bed trying to figure out how to make their



▲ Baseball Hall of Famer Ferguson Jenkins talks baseball during the closing luncheon.

mortgage payments and send their kids to school," Kittle said. "Each pending foreclosure not completed means no payments to Realtors or title agents."

### A Reporter's View

Syndicated award-winning columnist Ken Harney complimented ALTA for its efforts to ban private transfer fees (PTFs) and offered suggestions to help the industry garner better press during the general session of day two of the conference.

Harney praised ALTA for its leadership in bringing together an assortment of associations from disparate sectors to form the bipartisan Coalition to Stop Wall Street Home Resale Fees, which organized to get legislation passed to ban PTFs across the country. "As a longtime watcher of trade groups, I called it the Noah's Ark coalition," Harney said. "It's an impressive and diverse group. The only people missing are the Mother Theresa Society."

Harney's point was simple.

"Although there's perception that ALTA gets a lot of bad press, an issue like this, brought up by

ALTA, puts the industry in a very different, positive light. When you are positioned on the consumer side, you never lose," he said. "ALTA should use the PTF coalition as a good guideline and be proactive on consumer issues. It may not be issues that directly impact the industry, but it would be good to hear from the title industry."

Harney said the No. 1 thing the industry can do to help its image is provide better transparency into what takes place during the transaction. He suggested title agents provide an ongoing series of messages to the consumer updating them on the status of the transaction.

He also suggested the industry create better transparency regarding pricing and suggested title companies consider the GEICO model. Harney suggested title companies consider employing something similar to Angie's List, which is a website that aggregates consumer reviews of local service companies, as a way to "capture word-of-mouth wisdom." Angie's List is unusual in that it charges consumers to see reviews, reflecting the company's claim that charging consumers "adds credibility to the information." ■



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## ALTA Board Member Honored for Professional, Civic Achievements

Peter Birnbaum, president and CEO of Chicago-based Attorneys' Title Guaranty Fund Inc., was named an Academy of Illinois Lawyers Laureate by the Illinois State Bar Association's Academy of Illinois Lawyers for his dedication to the legal professional and equal commitment to investing in his community and assisting neighbors.

Over the past three decades, Peter Birnbaum proved to be a dedicated legal professional committed to not only the art and craft of law, but equally committed to investing in his community and assisting his community neighbors.

Birnbaum, president and CEO of Chicago-based Attorneys' Title Guaranty Fund Inc. and a member of ALTA's Board of Governors, has been described as a man who follows the golden rule. His unrivaled dedication to his profession and community were recently recognized, as he was named a 2011 Academy of Illinois Lawyers Laureate.

The Illinois State Bar Association's Academy of Illinois Lawyers inducted its 11th class of Laureates, including Birnbaum and six others, during a luncheon in April. The Academy

was established in 1999 to celebrate excellence in the practice of law by individuals who maintain the highest standards of professional and public service. The 2011 class brings the total number of attorneys receiving the honor to 102.

"This is very humbling and something I didn't expect," said Birnbaum, who has been with ATG for 30 years. "In an era where people jump from job to job, it's validating to those who spend their careers doing something they feel compassionate about. Working at one place my entire career has given me the opportunity to build relationships and I hope a good reputation. In turn, I think that has given me a chance to give back. I'm truly honored to be included among this select group."

The Board of Regents selects the Laureates from submitted

nominations. To be eligible, candidates must have practiced law primarily in Illinois for at least 25 years, must be a member of the Illinois State Bar Association, and must have demonstrated a commitment to the highest principles of the legal profession and to serving the public.

"The Academy honors lawyers who have established and maintained the highest principles of the profession as demonstrated by their pervasive record of service to the law and the public," said Mark Hassakis, ISBA president.

Birnbaum began his career at ATG as a law clerk in 1981. At the time, he was a first-year student at the Chicago-Kent College of Law, from which he graduated in 1983. He advanced to positions of staff attorney, and vice president and counsel before being named CEO and president in 1991. He has testified before the U.S. Congress, the Illinois Senate and the Illinois Supreme Court Rules Committee. In April, Birnbaum was reconfirmed for his second term as an Illinois Court of Claims judge. His community involvement includes participation with Big Brothers Big Sisters of Metropolitan Chicago and the Jesse White Tumbling Team, among others.

"A spirit of civic duty and giving back has always been a good part of my life," said Birnbaum, who resides in Chicago's Roscoe Village neighborhood with his wife, Juliet, and their three children. "I've been

fortunate in my career. I believe I have a duty to help others.”

Spearheaded by Henry Shulruff, senior vice president at ATG, several influential jurists, politicians and community leaders wrote letters supporting Birnbaum’s nomination.

“He is a lawyer’s lawyer, a successful business executive, a humanitarian, a mentor, a philanthropist, a teacher, a devoted father and a great friend,” said Shulruff, who has worked with Birnbaum for nearly 25 years. “There is in some men, an innate quality that drives them to help those around them in any way they can. Peter exemplifies the values, standards and ideals of the best of the legal profession.”

Birnbaum’s lectures and articles are staples in the educational programs of local bar associations, the ISBA and the American Bar Association (ABA). While his topics are diverse, they carry a common theme of promoting the profession and protecting the consumers it serves.

He’s also left his mark by reaching into the homes of thousands of underserved families by putting together the largest foreclosure prevention events held in Illinois. Lawyers were trained to counsel at-risk homeowners on how to restructure their mortgages and save their homes. The service gave about 3,500 vulnerable people the opportunity to keep roofs over the heads of their families.

“These are the things of which Laureates are made,” Shulruff said.

Birnbaum’s humanitarian side was evident early in his career when in 1992, he agreed to serve on the board of Big Brothers Big Sisters of Metropolitan Chicago. He served on the board for nearly a decade and was elected the group’s president in 1997.

Wanting to do more, Birnbaum was matched with a young boy from Chicago’s tough west side. He helped the boy into a better school, worked with teachers, paid his tuition and provided guidance when the boy went astray.

“Although the odds were against him, that child is now a productive young man making his mark on society,” Shulruff said.

When his path crossed with that of now Illinois Secretary of State Jesse White, another charitable opportunity presented itself. Believing in the objectives of the Jesse White Tumbling Team, which provide a safe, drug-free alternative for children residing in two Chicago housing projects, Birnbaum offered to donate his time and took a seat on the charity’s board. He’s led the effort to develop the Tumbler’s first free-standing center since it was founded in 1958. The ground-breaking ceremony for the Jesse White Community Center was held in April.

“In more than 30 years of our friendship, Peter and I have become partners in working toward a brighter future for children,” said White, founder of the Tumblers. “His work has helped ensure that at-risk youth are provided with a positive alternative to gangs and drugs.”

Among the various awards and honors bestowed on him, Birnbaum has received the Outstanding Service Award from Big Brothers Big Sisters, a Board of Governors Award for



▲ Peter Birnbaum

Outstanding Service from the ISBA and received a Making a Difference Award from the Abraham Lincoln Morvitz Lend A Hand Program, to name a few.

“It’s hard to imagine that Pete has the time for all of his community projects and still has enough left in his tank to guide a major company into the 21st century,” said Tom Leahy, partner of the law firm Leahy & Hoste.

Birnbaum also has been an active member of ISBA’s Unauthorized Practice of Law Committee; served on Chicago-Kent’s Alumni Association for many years, serving as president in 2001; and served as president of the National Association of Bar Related Title Insurers.

Harold Kent, dean and law professor at Chicago-Kent College of Law, said Birnbaum stands out from the crowd because of his commitment in reaching out to others. Kent recalled a time Birnbaum delivered a talk at Chicago-Kent about the role of title insurance and engaged in conversation with Chinese graduate students.

“He later invited the students to shadow him at his office so they could get a better ‘feel’ for the structure of the title insurance industry,” Kent said. “Peter’s dedication to the legal profession, his mentees, his colleagues and to the community is unparalleled.”

Birnbaum, always the educator, saw an opportunity to explain the value of having property rights and having the protection of title insurance.

“I tried to give the Chinese students an understanding of private land ownership – a concept anathema to Chinese culture,” he said. ■

### Abstract Solution Group Partners with RynohLive

The Abstract Solution Group added RynohLive as a preferred vendor, providing advanced escrow account management and fraud protection for its members. Under The Abstract Solution Group's platform members will now have their accounts reconciled in near real time, eliminating disbursement errors and possible losses from fraud.

"A member of The Abstract Solution is a title agent who is taking the initiative to be the most risk adverse agent possible," said Marc Shaw, co-founder of The Abstract Solution. "Mitigating any and all potential losses for their underwriters helps make our members more of an asset to their insurer."

### RedVision Launches New York Product, Enhances Database in Texas

RedVision, a provider of real property research solutions, has launched a new service while enhancing its offerings in Texas.

The company launched its Automated ACRIS Recording Notification System in the four New York ACRIS counties. The new system empowers RedVision clients with instant notification of their document recordings in Kings, Queens, Bronx and New York counties.

RedVision will offer this service free of charge to all clients that utilize RedVision's document recording services.

In Texas, RedVision improved its property record database for non-insured products with the addition of Bexar, Jefferson, and Rockwall counties. The addition of these three counties increases RedVision's database to include property records for more than 56 percent of the Texas population.

### Hawaii Places Moratorium on New Regular Nonjudicial Foreclosures

Hawaii recently passed Senate Bill 651, which places a moratorium through July 1, 2012, on all new regular nonjudicial foreclosure actions. This prevents foreclosures by power of sale to be initiated or recorded during the relevant period. Effective Oct. 1, 2011, the Mortgagee Foreclosure Dispute Resolution Program (Program) under Bill 651 will begin requiring the

mortgagee, at the election of the owner-occupant, to participate in the Program before the mortgagee can foreclose on the property by way of a public sale. This mandate will sunset on Sept. 30, 2014. Bill 651 also provides a window, until Aug. 15, 2011, for an owner-occupant to convert a nonjudicial foreclosure into a judicial foreclosure under certain limited circumstances.

### Fidelity Introduces New LEED Product

Fidelity National Financial announced the availability of the LEED Project Certification Data Report for LEED certified properties in the United States and abroad.

"FNF is proud to lead the industry in introducing our exclusive product for LEED Certification due diligence. This unique collaboration with the U.S. Green Building Council (USGBC) and the Green Building Certification Institute (GBCI), allows us to provide new solutions

to support the emerging market of sustainable real estate and alternative energy development," said Randy Quirk, president of Fidelity National Financial.

The LEED Project Certification Data Report will be issued at the request of owners, lenders, buyers, tenants, attorneys, appraisers and other stakeholders of certain commercial properties that are certified under USGBC's LEED Green Building Rating System by the Green Building Certification Institute.

RED (VISION)



### Three Underwriters File Joint Federal Lawsuit in New Mexico Land Grant Dispute

First American Title Insurance Company, Stewart Title Guaranty Company and Old Republic National Title Insurance Company filed a lawsuit in the U.S. District Court of New Mexico against members of a city's Land Grant Board of Trustees in a dispute over land grants.

The suit questions the Arroyo Hondo Land Grant Board of Trustees' claims that a land patent issued for the grant in 1908 created an "inalienable communal interest" for those to whom it was assigned. Lawyers for the underwriters argue that the board as well as the heirs have no legal claim to the entire grant and are asking that a federal judge declare the deeds "null, void, and of no legal force or effect."

In October 2010, a warranty deed was recorded with the Taos County clerk alleging to pass ownership of 20,000 acres land north of Taos to the five-member board of trustees that was formed in June 2009. The deed also claims to pass ownership to "the heirs of the Arroyo Hondo Grant, whom are the Heirs of Nerio Sisneros and the 44 original settlers who accompanied him." A similar deed was filed in

December 2010 for 22,000 acres south of Taos.

The suit states that the filing of the land grant deed was "in bad faith, without color of law, for the purpose of causing injury and with reckless disregard of Plaintiffs' interests." The Hondo grant board and its representative have argued that heirs have a right in perpetuity to the entire land grant because it was patented by Congress in 1908.

According to the lawsuit, the underwriters believe the patent does not prevent the land from being transferred to new owners.

"Upon information and belief, some, or all, of Defendants have treated the Patent Land as freely alienable in fee simple, and are barred by the doctrines of laches and estoppel from asserting the contrary," the lawsuit states.

The underwriters state in their lawsuit to have insured title to hundreds of privately owned properties within the Patent Land. Upon information and belief, the title insurance industry has collectively insured over 1,000 such properties. According to the Taos County Assessor, there are approximately 3,074 privately owned

properties within the Patent Land which are currently being assessed.

Prior to the filing of the Deeds, Declarations, and By-laws, the underwriters' uniform practice was to issue title insurance policies for properties held in fee simple and within the Patent Land without an exception for the alleged communal land grant rights.

"The filing of the Deeds, Declarations, and By-laws has clouded the titles to all fee properties within the Patent Land, including properties therein with titles insured by Plaintiffs," the lawsuit stated. "The filing of the Deeds, Declarations, and By-laws has clouded numerous mortgage liens on property within the Patent Land, impeding lien rights. Further, additional lending with respect to such property is in many respects dependent upon Plaintiffs' ability, and the ability of other title underwriters, to insure the

lenders' security interests in a manner acceptable to the lenders. The cloud created by the Deeds, Declarations, and By-laws impedes Plaintiffs' ability to do so."

The underwriters claim their business has been impeded because transactions concerning the property within the Patent Land have failed due to the cloud on titles created by the filing of the Deeds, Declarations, and By-laws. The underwriters also state in the lawsuit that they face potential liability arising from demands on title policies issued prior to and after the filing of the Deeds, Declarations, and By-laws.

The underwriters seek relief to resolve the uncertainty surrounding the legal effect of the Deeds, Declarations and By-laws, enable them to ascertain the extent of their exposure to liability, and allow them to plan financial and business affairs accordingly.



### 50-Year Title Veteran Retires from Stewart's Commercial Division in Houston

Stewart Title announces after more than 50 years in the title business, Jim Putnam, senior vice president – Commercial Division at Stewart Title – Houston, is retiring. Putnam is succeeded by industry veteran Randy Elkins.

“Jim has always approached the title business with a desire to continuously learn and hone his skills,” said Stewart Morris, Jr., president and CEO of Stewart Title. “He understands that this is a hands-on business, that to get better you’ve got to be involved at every level, and Jim’s done that for as long as I’ve known him.”

Putnam got his start in the title business at the Stewart Title office in Dallas in 1960. He moved back to the Houston area several years later and got a job with American Title Company where he worked his way up to

president before returning to Stewart Title in 1996 at his current position.

During his long career, Putnam has been involved in some of the biggest commercial transactions in Houston – including the Galleria and many of the office buildings downtown – and come to know some of the most active market players in the commercial real estate industry. This experience enabled him to recall information and facts on a host of properties and transactions throughout the Houston area.

“Jim’s knowledge and wisdom have made him an incredibly valuable resource for our company and our customers,” said E.D. Lester, CEO of Stewart Title Houston, “but more than what he knows, it’s how Jim approaches the title business that has helped make our commercial division the best in the city.”

### Stewart Adds Industry Veteran to Commercial Division in Northeast

Michael Desmond joined Stewart National Title Services’ Boston operation as vice president, national business development. Desmond will be responsible for expanding

Stewart’s national commercial business and concentrating on increasing the company’s market share in the Northeast region of the U.S.

### First American Names President of New York Division

First American Title Insurance Co. appointed Steven Rogers as president and managing director of its New York division. In addition, Rogers has been named a senior vice president of First American Title Insurance Co. He will be responsible for all aspects of First American Title’s New York division, including business development, both direct and agency, and underwriting. Rogers, who has been with First American

for nearly 17 years, began his career with the company as claims counsel and was responsible for claims administration, including evaluation of liability and claim resolution. Most recently, he served as vice president and senior national underwriting counsel for the New York division, underwriting and coordinating complex, national commercial transactions.



*First American*

### WFG National Title Grows Commercial Division

WFG National Title Insurance Co. added Trevor Cheyne as assistant vice president, manager commercial division and senior escrow officer. As manager of the commercial division, Cheyne will be

charged with growing the company’s national commercial capability and customer base. Cheyne comes to WFG National Title with 15 years of industry experience, working 10 years with commercial transactions.

### National Title Company Adds Exec to Sales Team

New Millennium Title Group announced that David Wilson will serve as its senior vice president, national sales. Wilson, who will be based in Atlanta, has 24 years of experience in the mortgage and settlement services industry, most

recently serving as vice president of sales with Equifax Settlement Services. Before that, he spent six years with Lender’s First Choice as its executive vice president and chief marketing officer. He also spent 17 years with LSI.

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## Representing ALTA at State Conventions Allows for Collaboration

One of the duties of the ALTA president is to speak at various state land title association conventions throughout the year. While many may view it a function of the leadership role, I consider it an essential opportunity to communicate and collaborate with leaders at the state level.

I attentively attend all of the Board meetings, sharing ideas and concerns. I attend all the classes and sessions so that I can hear what is going on at the state level, and share issues that others states have faced and sometimes conquered. Most importantly, I try to instill in the attendees the importance of participation in their state and national association. There is an immense value in meeting the fabulous industry professionals and being able to talk shop. This is true for my fellow members of ALTA's Board of Governors, who each share in representing ALTA at all of the state association conventions.

While these trips allow me to promote ALTA membership and TIPAC, they also give me the opportunity to recognize active ALTA members with their state peers and give the state association special recognition as well. I'm also given the opportunity to give the Cliff Notes version of what's going on at the federal level and the gigantic role ALTA is playing in preserving our important role in the real estate transaction. Let me tell you, there are so many issues ALTA is involved with. Rulemaking for the Dodd-Frank Act, implementation of the Consumer Financial Protection Bureau and GSE Reform are all game changers. It's important that all industry participants know what's at stake and share their concerns with ALTA and their state leaders.

I started my state association gauntlet traveling to the Alaska Land Title Association convention in February. I took a month off before hitting conventions in Tennessee and Oklahoma. In May, it was a trip to California before stops in Virginia and Texas in June. As this edition of TitleNews hits your mailbox, I should be returning home from the Pacific Northeast meeting (consisting of Idaho, Montana, Oregon, Utah and Washington). Then in September, I'll fly to Tucson to meet the Arizona folks. After ALTA's 2011 Annual Convention, which is being held Oct. 12-15 at the Charleston Place in Charleston, S.C., I conclude my tour at the Florida Land Title Association convention in November.

All of my visits thus far have proved to be highly beneficial and informative. I anticipate my upcoming stops will be just as fruitful, as we all share a common bond of strengthening our industry and sharing the important role we provide to the real estate transaction.

Anne Anastasi,  
ALTA President



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