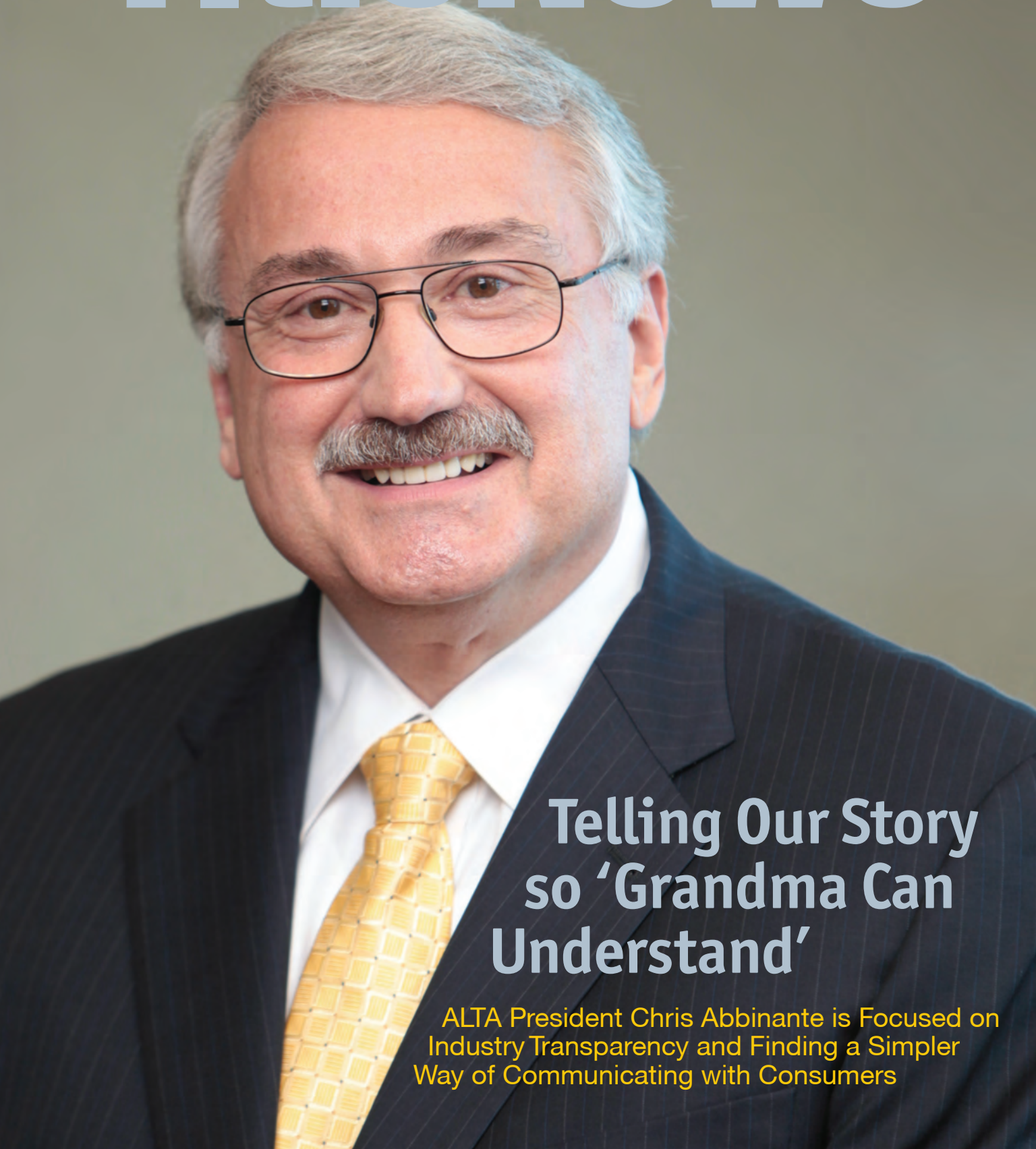


November 2011

Official Publication of the
American Land Title Association

TitleNews



Telling Our Story so 'Grandma Can Understand'

ALTA President Chris Abbinante is Focused on
Industry Transparency and Finding a Simpler
Way of Communicating with Consumers



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> contents

TitleNews • Volume 90, Number 11



10

COVER ARTICLE

Telling Our Story so 'Grandma Can Understand'

By Jeremy Yohe

ALTA President Chris Abbinante is focused on improving industry transparency and finding a simpler way of communicating with consumers.

Features

18

INSIDE THE INDUSTRY

ALTA Makes Successful Push to Prevent Wall Street from Stealing Main Street's Home Equity

By Steve Gottheim

In 2009, only a handful of states had legislation banning or restricting private transfer fees. Today, there are 37 states with legislation on the books.

22

MARKET STATS

False Statements, Debt Elimination Among Leading Mortgage Fraud Scams

FinCEN noted problems with funds disbursement through several settlement companies and title agencies.

24

RUNNING YOUR BUSINESS

Technology: The Means to Grow Your Business

By Paul Mass

In a tough real estate market, adopting technology is a must to stay competitive and profitable.

26

INDUSTRY NEWS

Agent Defalcation Forces Regional Underwriter to Suspend Issuance of New Policies

A significant defalcation by a former title agent coupled with a spike in claims forced Southern Title Insurance Co. to suspend issuance of new policies effective Sept. 15.

Departments

4

Calendar of Events

5

From the Publisher's Desk

7

ALTA News

17

Inside ALTA

29

New Members

30

The Last Word

calendar

ALTA CONFERENCES

March 25	Agents & Abstracters Forum Louisville, KY
March 25 - 27	2012 Business Strategies Conference Louisville, KY
May 6 - 9	2012 Federal Conference and Lobby Day Washington, DC
October 17 - 20	2012 Annual Convention Colorado Springs, CO

STATE MEETINGS

December 1 - 2	Louisiana
April 19	Oklahoma
May 6	Iowa

THANK YOU



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from the publisher's desk

Positive Buzz Reverberates from ALTA Annual Convention

Over 600 title professionals from across the country attended our Annual Convention last month in Charleston, S.C. It was a great event. I heard positive remarks on the session speakers, the work done in ALTA committee meetings, the number of new contacts made, ideas exchanged for growing business, and the quality of information on legislative and regulatory policies affecting the industry. More importantly, the attitude among attendees was extremely positive. It was obvious that ALTA members see their trade association as well positioned to meet the challenges of today and excel in the future.

During the Convention, we announced two significant achievements. First, I had the pleasure of telling a packed general session hall that ALTA has surpassed more than 4,000 member companies to set an all-time record. Professionals in the title insurance industry understand the value of association membership, even through this prolonged economic downturn. This achievement is due in large part to the efforts of the membership committee and its chairman, Jim Stipanovich. Thank you!

We were also thrilled to report that thanks to the tireless efforts of TIPAC Chairman John Voso and the entire committee, while we were in Charleston TIPAC surpassed its 2011 goal to raise \$300,000. Our PAC is increasing its effectiveness and your contributions allow ALTA's advocacy to have some teeth.

During his presentation at the Convention, Fannie Mae Chief Economist Doug Duncan delivered the sobering news that the housing market is only halfway through a 10-year process of getting back to normal levels. Despite this news, attendees remained upbeat, possibly because they've accepted the conditions and have prepared to endure more lean years. While there were many highlights of the Annual Convention, the neatest event was the closing general session speaker, Navy SEAL Mark "McGoo" McGinnis, who shared with us what it takes to be a SEAL. I appreciated his message on how to apply principles of flawless execution into everyday situations to build a culture of success.

All of the presentations and conversation at the Annual Convention were well summed up in Anne Anastasi's farewell address. Anne used Lady Gaga's song "Edge of Glory" as a metaphor for the association as she ran through a list of accomplishments over the past year. Accomplishments that were made possible by unity and industry leaders working toward focused goals. Thanks to the Board, our volunteer leadership and our engaged members, we are on the edge of glory. I encourage you to read the cover article on Page 10 to learn more about our new president, Chris Abbinante, and his vision for the association. The industry is in good hands with Chris in the lead for the next year



A handwritten signature in black ink that reads "Michelle Korsmo". The signature is fluid and cursive, written on a light-colored background.

- Michelle Korsmo, ALTA chief executive officer



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Oral Arguments Scheduled in U.S. Supreme Court RESPA Case

The U.S. Supreme Court has scheduled oral arguments in the *First American Financial Corporation v. Edwards* case to begin Nov. 28.

The case involves a basic question of constitutional law addressing who has standing to bring a lawsuit under the Real Estate Settlement Procedures Act (RESPA). Denise Edwards sued First American over an alleged kickback under Section 8 of RESPA despite not alleging she was overcharged for title insurance, received deficient service or was dissatisfied with her experience in any way. Typically, consumers are only entitled to damages when they can prove they were actually injured.

The justices granted an appeal by First American, which is seeking to block the suit in a federal court in California. The U.S. Court of Appeals for the Ninth Circuit held that the plaintiff did not need to show she was overcharged to have standing to assert a claim based on a violation of RESPA's anti-kickback prohibition. First American appealed, arguing that consumers can't sue under RESPA unless they claim they paid higher fees as a result.

ALTA filed an amicus brief in support of First American informing the court about how allowing these no-injury class actions would negatively affect the entire title industry.



ALTA Comments on Efforts to Reduce Foreclosure Backlog

The U.S. Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Housing, Transportation and Community Development held a hearing recently titled "New Ideas to Address the Glut of Foreclosed Properties."

Among the witnesses speaking were Allan "Dutch" Dechert, president of the New Jersey Association of Realtors; Bob Nielsen, chairman of the National Association of Homebuilders; Chris Krehmeyer, president and CEO of Beyond Housing; Laurie Goodman, senior managing director of Amherst Securities; and Stan Humphries, chief economist for Zillow.

Commenting on the hearing, Justin Ailes, ALTA's vice president of government and regulatory affairs, said that the first thing Congress must do is bring confidence and certainty back to the marketplace by establishing programs that encourage consumers and investors to purchase foreclosures.



"Homeowners need to know that if they buy a foreclosed home, their ownership to their property won't be challenged or taken away," he said. "Manufacturing uncertainty by suggesting that defaulted borrowers will be allowed to retake title to the property will only delay a housing recovery."

ALTA advocates that title insurance provides confidence in the marketplace by making a mortgage loan safer for borrowers and investors. The purchase of title insurance is a best practice and an essential aspect of safe mortgage lending.

"Having collateral underwriting standards such as title insurance is a common sense idea that needs to be preserved as we find solutions to reduce the backlog of foreclosures," Ailes said.

ALTA Urges Minnesota S.C. to Reverse Decision Awarding Damages Exceeding Policy Limit

ALTA and the Minnesota Land Title Association filed an amicus brief with the Minnesota Supreme Court asking it to reverse a decision by the Court of Appeals that awarded damages exceeding the policy limit.

In *Mattson Ridge LLC v. Clear Rock Title LLP and Ticor Title Insurance Co.*, the Court of Appeals reversed the trial court's ruling and held that when a title defect is discovered, the insured can recover damages in excess of the policy limits.

Mattson Ridge, a developer, bought vacant land in Chisago City for \$1,286,000 and purchased title insurance from Ticor Title in that amount. The legal description of the property included a reference to "the intersection of road leading from the county road at or near Charles Magnuson's place in Sunrise City." When Mattson tried to sell the property, the buyer couldn't get title insurance because of the ambiguous legal description. Mattson filed a claim, but Ticor denied the claim contending the issue was excluded from the policy.

According to the brief, the title policy language stated in Schedule A that the amount of the insurance was in the amount of \$1,286,000. Despite the language, the Court of Appeals reversed the trial court's ruling. The brief says that the plain language of the policy in the case limits Ticor's liability to the policy limits.

"To hold otherwise, and allow recovery in excess of policy limits, abrogates the purpose of a title insurance contract and undermines the ability of insurers to predict liability," the brief said.

ALTA and MLTA concluded that saying the legal description was ambiguous is contrary to long standing surveying practices and threatens to make legal descriptions of thousands of properties statewide "ambiguous" for no legitimate reason.

"This will cause unwarranted claims of unmarketability along with untold confusion and wastes of resources for property owners, lenders, governments and title insurers to alter otherwise acceptable legal descriptions," the brief said.

ALTA Files Brief with Michigan Supreme Court in MERS Case

The American Land Title Association filed an amicus brief requesting the Michigan Supreme Court reverse a decision by the state's court of appeals in order to bring clarity to the validity of foreclosures that occurred in the name of MERS over the past two years.

In April, the Michigan Court of Appeals ruled in *Residential Funding Corporation v. Saurman/ Bank of New York v. Messner* that MERS does not meet the requirements under Michigan statute to foreclose by advertisement because the court holds that MERS is not an owner of an interest in the indebtedness. As such, the court held that the foreclosure was void from the beginning.

Properties that have already been sold out of REO are not impacted by the decision. This decision questions the validity of real estate owned (REO) properties. ALTA argues that the Court of Appeals misinterpreted the law and that MERS has the right to foreclose, and is asking the Supreme Court to reverse the decision and restore certainty to the marketplace so lenders will resume selling

REO properties and title companies will insure them.

According to the brief, "the decision wrongfully inhibits the ability of lenders to exercise their contractual rights to conduct foreclosures by advertisement through MERS. The appointment of MERS to hold mortgages as nominee (in essence a trustee, as discussed herein), and to take action with regard to those mortgages, is essential to obtain the benefits of MERS. As the mortgage loan is sold and resold on the secondary mortgage market, and servicing rights to the loan are purchased and sold, repeatedly changing hands, MERS serves as the contractual mortgagee to enforce the rights of the original lender and for each successive lender, to which the note and beneficial interest in the related mortgage are sold.

"The issues involved in this case are of major significance to Michigan law and to the real estate industry in Michigan. The majority's decision conflicts with the available legislative intent and misinterprets the 1994 amendatory language included in MCL 600.3204.

ALTA Joins Others in Commenting on Benefits of Providing Homeownership Incentives

As Congress takes steps to reduce the national debt, it should not make housing tax policy changes that will undercut a recovery, ALTA said in response to a hearing held Oct. 6 before the U.S. Senate Committee on Finance titled "Tax Reform Options: Incentives for Homeownership."

"Progressive tax breaks, such as the mortgage interest deduction, are pillars in the real estate community that benefit hard-working families," said Justin Ailes, ALTA's vice president of government and regulatory affairs. "Changing incentives will have unintended consequences for consumers and home values across the board. It's important to remember that homeownership offers a variety of benefits beyond providing shelter. Homeownership is the greatest source of wealth in the United States, and Congress should be mindful of making changes that will further harm the housing market."

ALTA also took the opportunity to explain the important role the title insurance industry plays in selling property.

"Title insurance and the

behind-the-scenes work of title companies ensures the quick and secure transfer of land, fostering consumer and lender confidence in their real estate investments and makes homeownership possible," Ailes said.

Those who testified before Congress during the hearing included Sen. John B. Breaux, senior counsel, Patton Boggs LLP; Dr. Karl "Chip" Case, professor of economics emeritus, Wellesley College and Senior Fellow, Joint Center for Housing Studies, Harvard University; Dr. Robert D. Dietz, assistant vice president for tax and policy issues, National Association Home of Builders; Dr. Richard Green, director, Lusk Center for Real Estate, University of Southern California; and Mr. Gregory M. Nelson, vice president and assistant secretary, PulteGroup, Inc.

Dietz told Congress that eliminating or curtailing the mortgage interest deduction would have a disproportionate impact on younger, middle-class families, who would see their ability to become owners significantly diminished, with sober implications for their longer

term financial prospects.

Most Americans consider homeownership to be their single best long-term investment and a primary source of wealth and financial security. According to the 2007 Federal Reserve Survey of Consumer Finances, the median net worth of a homeowner is \$234,600, compared to \$5,100 for renters.

As policymakers look to create jobs and boost economic growth, housing has an important role to play, said Dietz.

"Building 100 single-family homes creates more than 300 full-time jobs," he said. "Housing can act as a catalyst for job growth and an economic recovery because home building employs such a wide range of workers."

ALTA Accepting Presentation Proposals for 2012 Business Strategies Conference

The Call for Presentations for the 2012 Business Strategies Conference is now open. The conference will be held March 25-27, 2012, at the Louisville Marriott Downtown in Louisville, Ky.

If you are interested in proposing a session, visit the ALTA website at www.alta.org/meetings/techforum/cfp/ to learn more about the process. Follow the link to the online form, which contains a drop-down menu with relevant topics from which you can choose — or you can propose your own topic.

Once you complete your submission, you will receive an automatic confirmation that your proposal has been received.

The site also clearly outlines the selection process and speaker benefits.

The deadline for submissions is Friday, Nov. 18, 2011.

ALTA leadership, volunteers and staff will review proposals in late November and you should learn the final status of your proposal by early December.

Telling Our Story so 'Grandma Can Understand'

ALTA President Chris Abbinante is Focused on Industry Transparency and Finding a Simpler Way of Communicating with Consumers

Growing up the youngest of three brothers to first-generation immigrants from Italy, Chris Abbinante quickly learned the value of hard work. His father came to the United States in 1929 at the age of 16 with little money. And as a child living in a blue-collar family in the heart of Chicago, Abbinante watched his parents endeavor for a better life.

“My parents believed that you strived to give your children more opportunity than you had,” said Abbinante, who with his wife Katherine, has two children and seven grandchildren. “My father was a carpenter and was really talented with his hands. There wasn’t much he couldn’t make. Seeing his work ethic became ingrained in my approach to life. His, as well as my mother’s guidance, helped sculpt who I am today.” >>

By Jeremy Yohe



Now, Abbinante gets the opportunity to lead the American Land Title Association through a time when its value and transparency continues to be questioned. Abbinante was elected president of ALTA during the association's Annual Convention in Charleston, S.C., taking the helm from Anne Anastasi.

Michelle Korsmo, chief executive officer of ALTA, said "Chris is the right person to lead our association through the challenges we currently face. His talents as a title insurance executive are well regarded throughout the industry and he inspires confidence as we work to better serve consumers."

Abbinante said it's an honor to represent the more than 4,000 member companies and a privilege to represent an industry whose purpose is to provide assurance to homeowners that challenges to their homeownership will be protected. Sharing his vision for the coming year, Abbinante encourages more transparency and professionalism,

while urging the industry to explain its value in a way that "grandma can understand."

"When you can explain something to your grandmother, it's only then that you understand and can explain what you do," Abbinante said.

"The real end user of our products and services is the consumer. By definition, that makes them our customer. We need to find a way to communicate our value proposition so they learn what we do. We need to find a way to be more transparent."

He said that too often industry jargon prevents consumers and

regulators from understanding the value of our industry. This lack of understanding can lead to unintended consequences like the 2007 GAO report and efforts in states to use regulatory action to rewrite agency contracts.

"While staying under the radar worked for the title industry for many years, we must correct the lack of transparency, bring professionalism back to the industry and explain what we do in a simple and jargon-free manner so that consumers can understand, because it's all about them," Abbinante said.

■ "When you can explain something to your grandmother, it's only then that you understand and can explain what you do."



He encouraged the industry to embrace the notion of transparency and provide information about what we do, and make it available to regulators, legislators and consumers. Citing a survey by ING Direct, the nation's largest direct bank and largest thrift, 68 percent of homeowners surveyed were unable to correctly identify the purpose of the title services charge on the GFE.

"Every time we issue a commitment and policy, it's an opportunity to touch the consumer," Abbinante said. "This could be achieved by attaching an industry letter, without jargon, to explain how we have provided peace of mind to them." (ALTA is working on a letter

▲ Chris Abbinante gives his induction speech during the 2011 Annual Convention on Charleston, S.C.



▲ Chris Abbinante participates on the Underwriters Panel at the Business Strategies Conference in San Antonio, Texas in 2009.

members can modify and send to consumers to take advantage of these touch points.)

Abbinante also wants the industry to embrace the value it provides to the real estate industry and economy, and conduct business like professionals.

“When I started in the industry, it was a profession and you were a professional,” he said. “Somewhere along the line, and I think it’s a societal thing, but most professions became jobs, and I think there’s a difference. I really want us to focus on who we are because we are professionals and, for the most part, people in this industry conduct themselves as professionals.”

The Early Years

With a sturdy foundation formed at childhood, Abbinante used the life tools he learned from his parents and pursued a law degree after graduating from Loyola University in 1972 with a bachelor’s degree in history. As a senior in law school at John Marshall Law School (where he received his juris doctorate and master of laws

“Every time we issue a commitment and policy, it’s an opportunity to touch the consumer.”

degrees), he took a job as a clerk for a law firm in 1975. The firm had a small title agency, so he handled tax, divorce and real estate matters, recording documents, paying taxes and getting copies of instruments.

“I became a jack-of-all-trades,” said Abbinante, who also earned a MBA from the University of Chicago in 1985.

At that point, a career as a practicing lawyer seemed likely; however, shortly before taking the bar exam, a posting by Chicago Title for the soon-to-be graduate caught Abbinante’s attention.

“Chicago Title was one of the biggest employees of attorneys,” he said. “They would hire attorneys out

of law school and start them a couple of weeks after the bar exam.”

After a six-month training course, the newly hired attorney examiners learned how to search and to create a chain of title, and basic underwriting skills. In March 1976, his training was cut short. With the economy going well, Chicago Title needed people in their customer units to address problems and help close transactions.

“After the first 18 months, I knew this was what I wanted to do,” Abbinante said.

Over the next couple of years, Abbinante took on several challenges.

Much like his father’s expertise in carpentry, Abbinante was honing his skills for Chicago Title helping to set up successful offices. By his third year, Abbinante ran his own office in the Chicago area and noticed his responsibilities expanding. Despite garnering a larger role with the company, he still maintained his sales hat.

“When I manage something, I always want to do it well,” he said. “I consider myself a working manager. I had my own book of business when I was running the office. That was one of the hardest things I ever did.”

Dedicated Professional

All told, Abbinante has dedicated more than 35 years to the industry,

...serving in various capacities including Chicago Metro marketing and sales manager; manager of Cook County operations; senior vice president and general counsel for Chicago Title's central division; and eastern division manager.

Abbinante also got a taste of the agency business in the late 1980s. He was asked to assemble one of the first title agencies for Chicago Title in Cook County, Ill., bringing together 19 attorneys.

"They were all independent firms, but brought together their suburban firms and put together a confederation," Abbinante said.

Abbinante was then sent to the southeast in 1992, where the bulk of his responsibilities were agency based. In 2001, Chicago Title became part

of the Fidelity National Financial Family of Title Companies. As part of FNF, Abbinante served as Division Four manager and Co-COO, before assuming his role as president of Eastern Operations for Fidelity National Title Group (FNTG). In June 2010, he scaled back his involvement with Fidelity and now serves as a consultant with FNTG, working with Canadian operations as well as with U.S.-based operations located primarily in the eastern and central parts of the country.

Support of ALTA

Abbinante is a staunch supporter of getting involved. He began participating on ALTA's Underwriter Section Executive Committee in 1999 and joined the Board in

2003. He's also served on many committees, including the Finance, Government Affairs, Nominating and Planning committees. Abbinante encourages those in the industry to become supportive members through committee work and through TIPAC, and to also support the state land title associations as well.

"It's about a career and your life, and I can't imagine doing something for 35 years and not being a part of it," Abbinante said. "Being involved is critical on various levels. What happens to your industry impacts you directly. Why wouldn't you want to be involved and have a voice in what others are trying to decide? At the end of the day, they have the ability to impact your life. It seems to me, if



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you don't get involved, you don't have the right to complain."

Respected Leader

Frank Pellegrini, CEO of Illinois-based Prairie Title and a member of ALTA's Board of Governors, has known Abbinante for more than 30 years. The two worked together in Chicago Title's flagship office when Pellegrini was an upstart attorney examiner assigned to Abbinante's unit.

"It is not surprising that Chris' achievements have been extensive and his career remarkable," Pellegrini said. "Chris is regarded as a serious leader, keenly aware of what needs to be accomplished. At the same time, he cares about those he works with."

Pellegrini described his fellow ALTA Board member as the consummate title professional, passionate about the industry and a



▲ Chris and his wife, Katherine, have two children and seven grandchildren.

■ "He leads from intelligence, experience, integrity, truthfulness and candor."

champion of its core principles and ethical underpinnings.

"He leads from intelligence, experience, integrity, truthfulness and candor," Pellegrini said. "He also leads from a burning commitment to a business he loves, and deep respect for those who toil in it. Best of all, he laces his impressive talents with warmth, a big heart and an engaging sense of humor. ALTA has a good man at the helm."

Sal Turano, president of Abstracts Inc. in New York, is one of many

long-time industry friendships Abbinante has forged.

"Chris is a devoted son, husband and grandfather. When not working and traveling, he devotes his time to his family," Turano said. "Many words jump to my mind when I think of Chris. Passionate, intelligent and principled are just a few."

Steve Day, executive vice president of Fidelity National Title Group, has worked with Abbinante for the last 20 years. Describing his unrivaled work ethic, Day said Abbinante

always led by example, managing with a low-key style but focused on direction and results.

"We could probably staff a small title company, maybe a large title company, with all the people he has mentored," Day said. "Chris always stressed three principles: Is it legal, is it moral and is it ethical? Many are an inspiration to a few. Chris is an inspiration to all. ALTA is gaining a leader with drive, passion and commitment to excellence." ■



Jeremy Yohe is ALTA's director of communications. He can be reached at jyohe@alta.org.

Katie Andrews
Florida Agency Operations



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Yes, we have the largest investment portfolio in the industry. And yes, our reserve for claim losses is more than the next three largest title insurers combined. But, it's the strength, expertise, and service of our people that really makes the difference.

If you know our people, you know they set us apart from the rest of the competition. If you don't know them, you should. Get to know our people and experience the difference they make. Get to know Fidelity National Title Group.

Meet ALTA's 2011 - 2012 Board of Governors & Executive Committees

ALTA is pleased to present its 2011-12 Board of Governors, as well as the Abstracters and Title Insurance Agents Executive Committee, and the Title Insurance Underwriters Executive Committee. Nominations were voted on during the 2011 Annual Convention, which was held Oct. 12-15 in Charleston, S.C. Randy Yeager, president and CEO of Old Republic Title Insurance Co., installed the Board members during the closing general session of the convention.

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Two-year Term: Daniel D. Mennenoh (*Galena, IL*)

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One-year Term: R. Norwood Gay, III (*Orlando, FL*)

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Three-year Term: Mary O'Donnell (*Winter Park, FL*)

Three-year Term: W. Morris Fine (*Chapel Hill, NC*)

Three-year Term: J. Scott McCall (*Dallas, TX*)

Two-year Term: Peter J. Birnbaum (*Chicago, IL*)

Two-year Term: Steven Day (*Jacksonville, FL*)

Two-year Term: Richard J. Patterson (*Rocky Hill, CT*)

One-year Term: Ted Rogers (*Baltimore, MD*)

One-year Term: John Hollenbeck (*Santa Ana, CA*)

One-year Term: Michael B. Skalka (*Houston, TX*)

ALTA Makes Successful Push to Prevent Wall Street from Stealing Main Street's Home Equity

In 2009, only a handful of states had legislation banning or restricting the use of private transfer fees. Today, due to coordinated efforts of ALTA and state land title associations, there are 37 states that now ban or restrict PTFs, with several more expected to address the issue during the next legislative session.

BY STEVE GOTTHEIM

This past summer, New York became the latest state to take action against private transfer fee covenants (PTFs). The new law, along with new legislation strengthening Texas' existing law restricting PTFs, is the culmination of a two-year effort led by the American Land Title Association, state land title associations and the National Association of Realtors (NAR) to stop the spread of these controversial fees.

"To get this many states passing legislation banning private transfer

fees is a significant victory for the title insurance industry; not only for ALTA, but for all state land title associations that worked with their legislators to get laws passed that protect homebuyers," said Michelle Korsmo, ALTA's chief executive officer.

A private transfer fee commonly occurs when a developer or homeowner places a covenant or other restriction in a property's title records. This covenant requires that upon every sale of the property for 99 years, the seller must remit a

percentage (usually 1 percent) of the final sale price back to the covenantor. If the seller fails to remit the fee, a lien is established against the property, which secures the unpaid amount plus any costs and interest. Failure to satisfy this lien could hinder the future sale of the property and leave the title unmarketable.

Even more concerning is the fact that one company is negotiating with potential investors to "securitize" pools of transfer fees by essentially creating bonds that can be sold on a secondary market, based on projected future cash flows.

Most legal experts believe these covenants are unenforceable as improper restraints on alienation. These covenants likely fail the common law touch and concern test. The touch and concern test, while sometimes hard to define, has been summarized as requiring that the covenant must affect the owner's physical enjoyment of the land. As University of Missouri Law Professor R. Wilson Freyeremuth correctly points out in his 2010 article in the American Bar Association's *Property & Probate* magazine, "Putting the Brakes on Private Transfer Fee Covenants," the key to the touch and concern test is the nature of the benefit or burden.

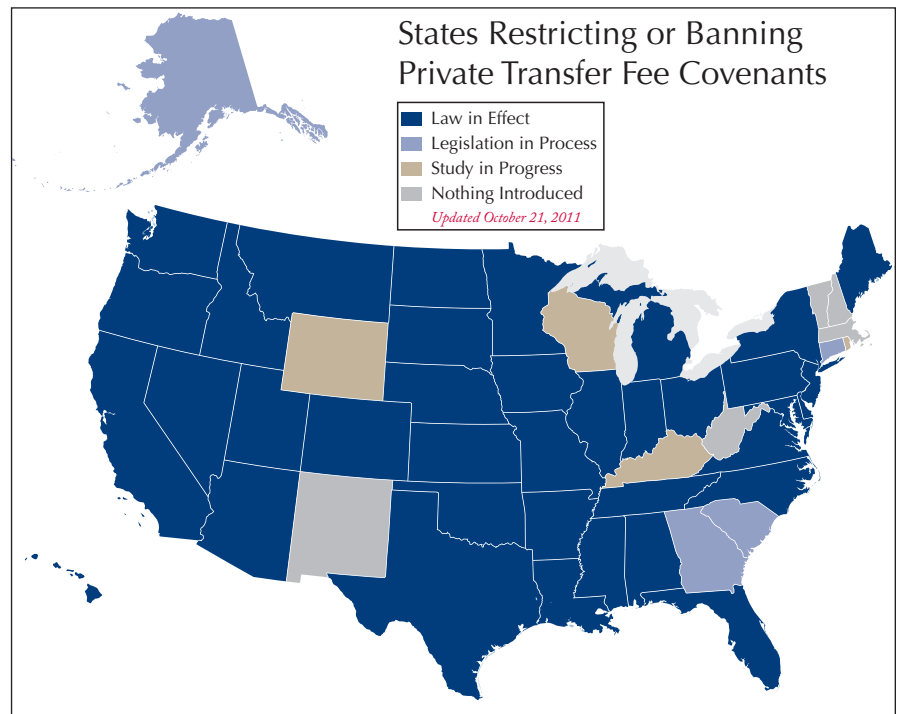
Traditionally, when the benefit and burden are payments of money, courts have held that the covenant is personal and does not touch and concern the land. There are extremely limited exceptions to this rule which

generally benefit homeowners' associations.

Almost all covenants for the payment of money are personal to the beneficiary and therefore they do not touch and concern the land. The weight of judicial opinion prevents covenants from binding successive owners when the benefit is personal or in gross. Typically, private transfer fee covenants are payable to a third party that is not a homeowners' association. The benefit of the fee goes to a third party's business interest, funding the covenantor's future business or profits. Further, when the first transfer fee is owed, the covenantor has usually sold their interest in the development and has no more legal interest in any property in the development (outside the interest in the revenue from the private transfer fee). Therefore, the benefit of the covenant is personal to the covenantor, since it is not intimately tied to their enjoyment of their land in the development but is rather tied to their business interests.

Contrast this with the typical covenants, conditions and restrictions imposed by a homeowners' association where the covenant forces future owners of the property in the subdivision to pay dues to the association. These covenants are found to touch and concern the land because as a badge of land ownership, the homeowners are burdened with the payment but they also benefit from the association's activities and requirements. Unlike the typical private transfer fee, the association's activities affect the property owner's physical enjoyment of the land.

Private transfer fee covenants are a relatively new occurrence originating in California and Texas over the last decade. One of the first reported



covenants was created to meet the demands of the Sierra Club and Audubon Society for environmental protections during the development of Fiddymont Farm in Roseville, Calif., which imposed a 20-year covenant with the proceeds going to preservation of open spaces. Since that time, these fees have spread quickly, with a leading proponent of these fees estimating that more than \$600 billion in real property is encumbered in 45 states.

In 2009, only California, Texas, Florida, Ohio, Missouri and Kansas passed legislation banning or restricting the use of these covenants. Since then, 31 other states have passed legislation banning PTFs, with the most recent being New York in September.

"This bill is an important step in enhancing consumer protections, ensuring the safe and efficient transfer of property and protecting our property rights system in New York," said Paul Bugoni, president

of the New York Land Title Association.

Earlier this year, Texas passed a stringent bill that closed loopholes in the law by prohibiting future private transfer fees on real property. It also requires notification and refileing every three years for fees that were in place prior to passage of the original legislation.

"The Texas Land Title Association (TLTA) supported passage of the original statute and we are pleased to support legislation that strengthens the law with important new consumer protections," said Phyllis Mulder, president of the Texas Land Title Association. "We applaud Governor Perry, Representative Darby and Senator Harris for protecting unsuspecting homeowners."

Texas was the first state to legislate against private transfer fees, but it was not the last. To help facilitate more states banning PTFs, ALTA and NAR, with assistance from the

Joint Editorial Board for Uniform Real Property Acts, drafted a model ban on private transfer fee covenants. The model law embodies the touch and concern test. Generally, the model law defines a private transfer fee covenant as “a provision in a document, whether recorded or not and however denominated, which purports to run with the land or bind current owners or successors in title to specified real property located in this State, and which obligates a

to convey clear marketable title. On Feb. 8, FHFA (the chief regulator for Fannie Mae and Freddie Mac) proposed a rule to ban the mortgage giants from purchasing mortgages backed by collateral that is encumbered by a private transfer fee. The comment period for this proposal ended on April 11. ALTA expects a final rule shortly.

Congress has even gotten into the act. Last year, Rep. Maxine Waters (D-Calif.) introduced HR

at large. Such instruments that purely fund private interests could chill alienability, increase the cost of homeownership without providing net value to the owner and pose serious risks to the stability and liquidity of the nation’s housing finance markets.”

The tide of public and policymaker opinion is moving toward recognizing the dangers these fees pose to consumers and real property transfer. Rep. Albio Sires (D-NJ) said it best: “These damaging and often hidden private transfer fees ruin home equity, depress home prices, and undermine (the) homeowner’s right to keep all the funds from the sale of their home.”

Syndicated columnist Ken 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 fight against PTFs.

“As a longtime watcher of trade groups, I called it the Noahs’ Ark coalition,” Harney said. “It’s an impressive and diverse group. The only people missing are the Mother Teresa Society.

“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.”

ALTA will continue working with other states to get PTF legislation passed. ■



Steve Gottheim is legislative and regulatory counsel for ALTA. He can be reached at sgottheim@alta.org.

■ “As a longtime watcher of trade groups, I called it the Noah’s Ark coalition. The only people missing are the Mother Teresa Society.”

transferee or transferor of all or part of the property to pay a fee or charge to a third person upon transfer of an interest in all or part of the property, or in consideration for permitting any such transfer.” The act then excludes certain covenants from the above definition, including fees typically included in a purchase contract, mortgage, listing agreement or option contract that are owed on a one-time basis and fees paid to homeowners’ associations or appropriate nonprofits.

On the federal level, both the Federal Housing Administration (FHA) and Federal Housing Finance Agency (FHFA) have recognized the dangers posed by these covenants. FHA’s General Counsel has confirmed that private transfer fees clearly violate HUD’s regulations prohibiting legal restrictions on conveyances and requiring lenders

6260, “The Homeowner Equity Protection Act of 2010,” which would have banned the payment of a private transfer fee in connection with a federally related mortgage under the Real Estate Settlement Procedures Act (RESPA). Like other provisions of RESPA, state attorneys general and insurance commissioners would have the authority to protect consumers from these fees.

Also in February 2011, the National Governors Association (NGA) added more support to the movement against private transfer fees, releasing a policy statement opposing the rapacious scheme. According to the NGA, the association opposes “predatory lending instruments that encumber mortgages on residential real property without providing benefit to the owner, neighborhood or community

Have you outgrown your current title production solution?

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False Statements, Debt Elimination Among Leading Mortgage Fraud Scams

Misrepresentations of income, occupancy or debts and assets, followed by debt elimination scams and scams involving the fraudulent use of social security numbers, topped the types of suspicious activity during the second quarter, according to the Financial Crimes Enforcement Network (FinCEN).

In its Second Quarter 2011 Analysis of mortgage loan fraud suspicious activity reports (MLF SARs), FinCEN reported that financial institutions filed 29,558 MLF SARs in the second quarter of 2011 up from 15,727 MLF SARs reported in the same quarter of 2010. FinCEN examined a subset of quarterly filings that reported suspicious activity occurring within 90 days of filing to better understand the latest trends in the reporting of suspected mortgage fraud.

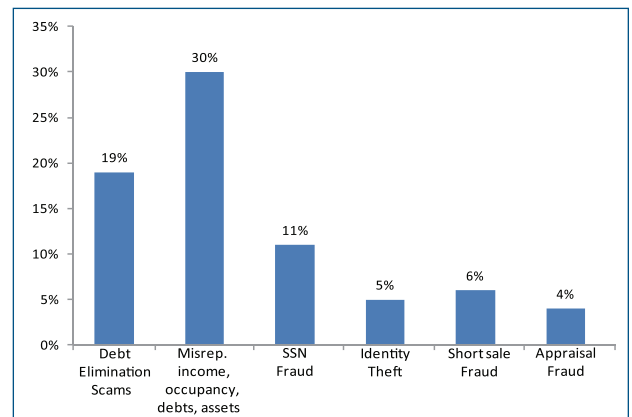
A large majority of the MLF SARs examined in the second quarter involved mortgages closed during the height of the real estate bubble. The upward spike in second quarter MLF SAR numbers is directly attributable to mortgage repurchase demands and special filings generated by several institutions. For instance, FinCEN noted that 81 percent of the MLF SARs filed during the quarter involved suspicious activities that occurred before 2008; 63 percent

involved suspicious activities that occurred four or more years ago.

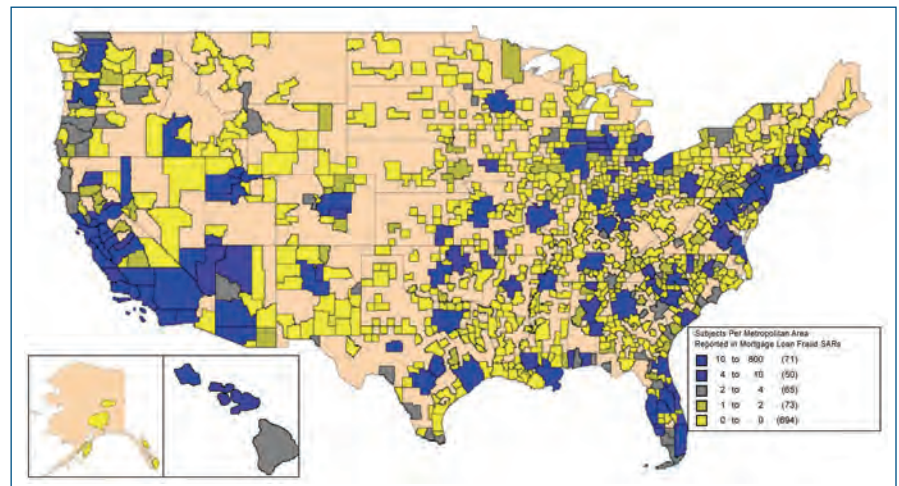
“We’re continuing to see a large number of SARs filed on activity that occurred more than two years ago, an indication that financial institutions are uncovering fraud as they sift through defaulted mortgages,” said FinCEN Director James H. Freis, Jr. “But we also continue to see indications of ongoing mortgage fraud activities. FinCEN’s report released today raises awareness of the common scams that homeowners and lenders may

encounter when arranging or modifying home financing.”


Specific to the title industry, FinCEN reported SARs filers noted problems with funds disbursement through several settlement companies and title agencies. In one SAR, the filer stated that, two months after closing, lenders had not received proceeds from the settlement agency. In another SAR, the filer noted that four different banks were still showing mortgages it had refinanced as being unpaid. The title company should have disbursed the funds, and the bank filed claims against the title company to cover the loss. ■



Source: FINCEN



Source: FINCEN



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Technology: The Means to Grow Your Business

In a tough real estate market, adopting technology is a must to stay competitive and profitable.

BY PAUL MASS

Technology continues to evolve and improve constantly, and for more than two decades it has provided tremendous value and efficiency to the mortgage industry. While investment in and adoption of some technologies have been slower than anticipated in certain industries, the benefits still await those who can overcome their trepidation. The title industry is one of the participants in the mortgage origination process that has interacted with many other participants in a manual way in some very important respects. This is why title and settlement companies, despite years of practice (and even profitability) of doing things the old way can both grow their business and increase their operating margins by embracing technology in some very simple ways. In a tough real estate market,

adopting technology is a must to stay competitive and profitable.

Inefficiencies of the Traditional Workflow

In a ClosingCorp survey of title agents conducted earlier this year, 80 percent acknowledged that they provide their rate and fee information by phone, fax or manual means. Only 10 percent said they post rate information on their websites and 3 percent claimed they periodically mailed rate schedules to clients. The bottom line is that most title agents are using inefficient, old-school methods of providing rate information to their lender clients. Given current RESPA regulations and the need for quick, accurate good faith estimates (GFEs) delivered to borrowers, around-the-clock, reliable, accurate service to lender clients is a must. Lenders will increasingly

look to vendors that offer automated solutions for this information so that they can have instant access to fees and rates – including recording fees and transfer taxes. Most lenders do not want to risk all of the predictable mistakes, omissions and inconvenience that is evident by having to rely on manual or paper transmission of this data. By offering an online title or GFE calculator on its website, a title company can provide substantial value to a lender and can differentiate itself from its competitors who may not offer such tools.

Technology is the Key to Greater Efficiency

Technology is inherently more capable of handling the increasing complexity of the title and settlement business itself. Title and settlement rates and fees, underwriters' premiums and agents' local fees, local customs and practices, local recording fees and transfer taxes, negotiated rates particular to certain companies – all of these unique circumstances can be accessed through existing databases and delivered via online data services. The title industry must leverage these technology solutions to better compete for business. Manual handling, delivery and transcription of such increasingly complicated data cannot provide as accurate, instant or convenient service to lenders and closing professionals. Real-time access to this information is invaluable to lenders and others

in the mortgage business. Relying on these data solutions allows title company staff (as well as its lender client's staff) to focus on their core job of selling, business development, marketing or otherwise closing loans.

Increased productivity and reduced labor costs are not the only benefit that the title industry can reap from a greater reliance on technology. Better regulatory compliance through the use of technology solutions is resulting in dramatic savings by many lenders in the amount of tolerance violations they are paying because of inaccurate GFE estimates. If a title company can offer a tool to directly provide such benefits, it will surely differentiate itself from competitors and attract new lender clients. Certain lenders pay millions of dollars each year in tolerance violations related to GFEs – an unnecessary expense and disservice to their borrowers. Therefore, title companies with the ability to alleviate this cost with the use of technology are invaluable to lenders and their bottom line.

The Regulations Keep On Coming

The 2010 RESPA reform regulations promulgated by HUD were the latest examples of complex, mandatory requirements imposed on the mortgage origination industry, including adoption of new GFE and HUD-1 forms. Now, with the 2011 creation of the Consumer Financial Protection Bureau (CFPB), it will not be long before different or new forms and requirements supersede, at least in part, some of the recent RESPA changes. What new or different requirements await the title industry and its lender clients in the next year or two? No matter what they are, the

ever-changing regulatory landscape makes it even more important for the title industry to rely on technology to better serve their clients. Technology can help provide title and settlement companies with services that let their clients gain increased regulatory compliance as well as increased productivity.

What's Next?

After providing data to lenders using a reliable, robust system, the next logical step for a title company is to make ordering capabilities available. Any lender or real estate agent that finds rates and fees from a title company and is ready to order title services, is more likely to take advantage of a system that can also facilitate the order seamlessly, saving even more time and creating more efficiency.

The ordering process is quickly moving to electronic platforms. Lenders and real estate agents will increasingly favor clients that are available through these vendor networks and ordering platforms. Title companies can best serve their customers by being available through these networks and platforms and by using calculators and other web-based technologies that will save their clients time and money in doing business with them. Being connected in these ways provides a competitive advantage over title companies that are stuck doing business in the old ways.

Don't be Afraid of the World Wide Web

Title companies should continue their progress in leveraging the Internet to grow their businesses. For those companies not yet convinced, look around – talk to young homebuyers. In 2010, according to National Association of Realtors, 95 percent

of homebuyers under the age of 44 began their search for a home on the Internet. There were 83.4 million searches last year for title insurance-related terms and 27.9 million searches for settlement escrow, and related terms according to Google AdWords.

There is an increasing trend and need for lenders, borrowers and their real estate professionals to investigate, compare and access a broad range of closing services, including title and settlement companies. To not embrace technology is to handicap a company in a difficult competitive environment. The ability to offer information about your company, rates and service in a real-time manner using online platforms also gives users, particularly real estate agents, the opportunity to access this information using their mobile devices – a method of use growing exponentially.

The title industry must embrace technology to improve its own productivity and operating margins as well as those of its clients. Leveraging the Internet makes its marketing burdens much easier and less expensive without necessarily compromising any of its own direct marketing activities. Without offering access to more technology, companies risk losing exposure, orders, time and money. To steal and modify a phrase from the movie "Field of Dreams": If you save them time and money, they will come.



Paul Mass is president of ClosingCorp, an independent real estate data and technology company that develops online data services

products for mortgage lenders, real estate professionals and consumers. He can be reached at pmass@closing.com.

Agent Defalcation Forces Regional Underwriter to Suspend Issuance of New Policies

Despite an influx of new agents, new market opportunities and a solid management team, a significant defalcation by a former title agent coupled with a spike in claims forced Southern Title Insurance Corp. to suspend issuance of new title policies effective Sept. 15.

The regional underwriter based in Richmond, Va., said it will focus continuing efforts on the resolution of claims received on previously issued policies.

Brad Dantic, general counsel for Southern Title's parent company, ALPS, said a former agent in Texas that handled commercial transactions took a substantial amount of escrow funds.

In a press release, Southern Title also indicated it has continued to incur higher than normal claims arising from policies issued by now-cancelled agents in the years between 2005 and 2008.

"We're incredibly proud of our employees, and the effort they've invested

in the operational transformation of Southern Title. However, until we understand the full magnitude of those claims and defalcations, the decision to suspend operations was a difficult but necessary one," said Gene McCullough, president of Southern Title.

In 2010, Southern Title generated \$23.4 million in title insurance premiums, which was down from \$30 million in 2009. Through the first half of 2011, the underwriter reported \$11.9 million in premiums.

The directors and officers of Southern Title are confident the company is solvent and there is adequate surplus to pay all current and future claims of current policyholders. Southern Title's suspension of issuing new policies does not in any way hinder or affect Southern Title's commitment to pay current or future claims on existing title policies.

In an email, Southern Title indicated that while agents and approved

attorneys will be able to obtain policies on transactions that have already closed, no new Insured Closing Service Letters will be authorized.

"Agents are hereby notified that their authority to act on behalf of Southern Title under their Issuing Agency Contract is terminated and their authority shall be limited to taking such actions as are necessary to finalize transactions that previously closed," the email said.

Southern Title said it has worked in conjunction with the Virginia Bureau of Insurance throughout the process.

Southern Title is the second regional underwriter to cease issuing policies in the past two months due to defalcations. In July, the New Jersey Department of Banking and Insurance (NJDOBI) ordered New Jersey Title Insurance Co. to stop issuing new commitments in order to allow the company to focus on the resolution of claims it had received in recent months. One of

NJTIC's former agents, New York-based TitleServ, closed its doors in April and ceased operations after Citibank and Chase had instructed its mortgage managers not to put any further business through TitleServ. The FBI raided the TitleServ's offices on April 28. Millions are reported missing from TitleServ's escrow accounts.

The increase in agent defalcation has led regulators to consider underwriter liability of its agents' actions. ALTA staff recently held discussions with state advocacy leaders about this issue and have begun discussing concerns from both an agent and underwriter perspective. ALTA is hearing from agent members that they are concerned this may lead underwriters to drop agents and push more orders through their direct operations. Meanwhile, underwriters are concerned about accepting more responsibility for the acts of agents beyond what's in the scope of their contracts.

Land Title Association of Colorado Honors Fix With Outstanding Achievement Award

George A. Fix was presented the 2011 Outstanding Achievement Award by the Land Title Association of Colorado for his contributions to the title industry in Colorado.

Fix is a longtime veteran of the title

industry, starting in the business in 1968 when he purchased a 50 percent interest in Yuma County Abstract Company in Wray, Colo., while serving as Yuma County treasurer.

Fix's duties as treasurer ended in 1971 when he became the full-time

manager of Yuma County Abstract in 1970, following the death of his business partner, Joe Graham.

Fix and his wife, Cleora, have owned and operated Yuma County Abstract for the past 43 years.

He served on the Land Title Association of Colorado (LTAC) Board of Directors from 1975 to 1981, and served as the board president in 1980-81. Fix was appointed to the Colorado Abstractor Board of Examiners by Gov. Richard Lamm in the 1970s, and served on the board until 1981.

Fix has been an active member and participant in LTAC through his company for the past 43

years, as well as a member of American Land Title Association (ALTA) and attended numerous national conventions.

Fix's accomplishments include being named LTAC Title Person of the Year in 1983, and being a convention sponsor for many years, including this year. He is very proud of the title business and strives to do things the correct way.

He officially retired Jan. 1, 2011, but remains as co-owner of Yuma County Abstract along with his wife, and son, Curt. Fix still serves as the company president, and stays abreast of the business operation and industry issues.



A George Fix receives the Land Title Association of Colorado's 2011 Outstanding Achievement Award from Cindy Compton, president of the Land Title Association of Colorado.

TSS Software adds GreenFolders to its Software Platform

TSS Software Corp. added GreenFolders to its TitleExpress title and settlement platform. This integration provides TSS customers seamless access to the GreenFolders office management system, allowing staff to share files, documents, tasks and client communications.

The GreenFolders office management system is designed to increase

efficiency and productivity while reducing costs and eliminating the bother of paper files. GreenFolders connects staff and files in a single interactive, collaborative environment.

"GreenFolders provides our customers with an exceptionally sophisticated office management solution," said Barbara Miller, president and chief operating officer of TSS.

Proposed Bill Would Create Title Insurance System in Philippines

A bill has been introduced in the Philippines that would establish a land title insurance system to protect owners from alleged land grabbers. Senate Bill 2432 seeks to amend the Philippine insurance code to include a land title insurance system to protect "the insured against title defects, forgery, falsification, double-titling and similar unlawful acts that affect title to, or the use of real property."

The bill's explanatory note cites a previous Senate committee investigation that concluded that the country's entire system of "registration and titling of land is institutionally and intrinsically flawed."

To issue a policy, the insurer must conduct a "reasonable search and examination of the title and of such other information as may be necessary," according to the bill.

HomeServices of America Launches National Title & Closing Network

HomeServices of America, a Berkshire Hathaway affiliate, through its title and closing companies and strategic partners have come together to form National Title & Closing Network, which provides “brick & mortar” title and closing services nationally.

The network provides a single point-of-contact for all title and closing services nationwide but with transactions handled by local providers. Members of the network have access to a national technology platform that manages transactions online with a web-based work-flow platform featuring file tracking, file uploads, open orders, closed orders and all the details in between.

“A national network of local providers is quite a

different service offering from the large centralized platforms,” said Greg Mason, managing director of title services for HomeServices of America. “We believe in the model in which your title work is done by staff familiar with the local property records and the closing is done by professional closers who have knowledge of the transaction documents.”

The network includes large state and regional title companies and title companies affiliated with six of the top 10 real estate brokerages in the country, including such companies as Realogy, Long & Foster Real Estate Inc., Crye-Leike, Inc., Howard Hanna Real Estate Services, Prudential Fox & Roach and Windermere Real Estate.

eRecording Counties Top 700 Mark

The number of counties that are electronically recording documents surpassed 700 during September, according to Richard Bramhall, president of the Property Records Industry Association (PRIA).

“Between April 2010 and September 2011, the number of counties committing

to the eRecording process increased by 40 percent,” said Linn County (Iowa) Recorder and PRIA Technology Committee Co-chair Joan McCalmant.

It took from the late 1990s until August 2006 to reach the 200 counties mark. That number has now more than tripled in the ensuing five years.

Idaho Title Company Expands with Purchase

Boise, Idaho-based TitleOne announced it has acquired Idaho Title and Trust, one of eastern Idaho’s oldest title companies, bringing its employee-ownership business model to the eastern half of the state.

TitleOne currently operates in Ada, Canyon and Boise counties.

“Idaho Title and Trust has a phenomenal 100-year history, which we anticipate will be a great platform as we expand into Bonneville, Butte and Jefferson counties,” said Mark Tidd, president of TitleOne Corp. “We’ve built our reputation on

innovation and service in the western half of the state and look forward to serving new customers in eastern Idaho.”

Tidd said the 12 Idaho Title and Trust employees will become part of the TitleOne team. The sale and acquisition was motivated by previous owner, Gil Gardner’s planned departure from the title industry.

“As I’ve prepared to leave the industry, it was incredibly important for me to find the right buyer who I knew would take excellent care of my employees and our customers,” Gardner said.

Wisconsin-Based Title Company Makes Acquisition

Wisconsin-based Knight-Barry Title Group has acquired Lakeside Title of Kenosha, Wis., which marks Knight Barry’s 19th office. The company is now bigger and stronger in the Kenosha market, the company said in a release.

Kris Stratton, the manager of Lakeside Title, will team with Knight Barry manager Rolly Peckus to provide service to both companies’ customer bases.

Lakeside was owned in part by Steve Mills and was an in-house title company initially established to serve Bear Realty and Bear Homes.

“I chose Knight Barry because I believe their systems, service and technology are unique in the industry,” Mills said. “I thought it was a good fit for Lakeside Title’s employees, our real estate agents and communities that we have provided title services to over the past two decades.”

new members

Associate Members

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Thomas Benedict
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Marla Singletary
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Sunil Rajan
**SMART Software Management And
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Gurnee

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**Golden Eagle Title &
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ALTA Members Encouraged to Help Influence Imminent Changes

The presidential election is only a year away, and I'm reminded of the saying "If you don't vote, you can't complain." The adage may be overused, but it does have some truth, both in politics and when we consider the volume of state and federal legislation, and regulation impacting the title insurance industry.

Rather than sit back and wait for the government to tell us how we must operate or how things must be done, we need to mobilize as one voice and influence the process. When we work in unison, together we can achieve outcomes that benefit the industry AND consumers.

ALTA's new president, Chris Abbinante, captures this message in the cover article of this edition (See Page 10). If you do not choose to get involved, you do not have the right to complain. With so many issues that will impact how the industry operates, this will be essential in the coming year and beyond.



Here are five examples of how we influence the outcome of issues, together:

First, with the Consumer Financial Protection Bureau poised to release its first draft of a HUD-1 before Thanksgiving, it will be important for ALTA members to provide feedback on how the form could be used in real-life closings. If not, ALTA members will be stuck with the consequences.

Second, we need to get out in front of regulators' efforts to address escrow theft. Regulators are increasingly assigning liability for escrow theft, and putting regulations together that focus on solvency of agents and underwriters. It is important that our industry provide solutions, or they will be provided to us.

Third, due in large part to ALTA members' participation in Lobby Day (The 2012 ALTA Lobby Day will be held May 6-9 at the Hyatt Regency Capitol Hill in Washington, D.C.) where they told members of Congress about the important role the industry plays, language requiring a title insurance policy on securitized loans has been included in three GSE reform proposals so that title insurance will continue to have a vital role in mortgage finance.

Fourth, ALTA has moved quickly to challenge Freddie Mac's short sale affidavits that require closing agents to affirm transactions are arm's length and puts the agent in the position of indemnifying Freddie Mac against a negligent or intentional misrepresentation by the buyer or seller. When ALTA members engage and offer input, we can have a significant impact. Finally, the success of the title industry's efforts to ban private transfer fees is a result of the advocacy of state land title associations and ALTA members speaking up. Check out the article on Page 18, which reports that 37 states now ban these predatory fees.

With several issues on the horizon in 2012, we must remain vocal, we must remain united and we must remain involved, together.

- Justin Ailes, ALTA vice president of government and regulatory affairs

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