

February 2012

Official Publication of the
American Land Title Association

TitleNews



Finding Solutions to Protect Escrow Funds

ALTA Brings the Industry Together to Find
Viable Options to Thwart Agent Defalcations

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March 25 - 27	2012 Business Strategies Conference Louisville, KY
April 23	Agents & Abstracters Forum Dallas, TX
May 6 - 9	2012 Federal Conference and Lobby Day Washington, DC
May 20	Agents & Abstracters Forum Minneapolis, MN
September 23	Agents & Abstracters Forum Richmond, VA
October 17 - 20	2012 Annual Convention Colorado Springs, CO

STATE MEETINGS

April 19 - 20	Alaska
April 19 - 21	Oklahoma
May 6 - 8	Iowa
May 14 - 16	California
June 6 - 7	South Dakota
June 7 - 9	Virginia
June 10 - 12	Pennsylvania
June 10 - 12	Wyoming
June 14 - 16	Texas
June 21 - 24	New England (CT, ME, MA, NH, RI, VT)
July 15 - 17	Michigan
August 1 - 4	Kansas
August 9 - 11	Pacific Northwest (ID, MT, OR, UT, WA)
August 10 - 11	Minnesota

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from the publisher's desk

Shaping the Future of the Title Industry

I think that it is fair to say that consumers, regulators and policyholders expect a high level of professionalism from the land title industry. This means delivering a product and service with accuracy and providing protection for their money and their property. As leaders in the industry, ALTA members must hold the same high expectations of themselves and their colleagues as the public expects of us.

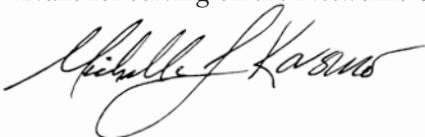
Defalcations have had a negative affect on the industry's reputation. You and I know the vast majority of agents work hard to keep the public trust. But, it is a fact of life that stories of bad actors get more attention than the stories of the thousands who do the right thing every day. It is up to us to make consumers confident in the soundness of the services we provide. We need to become more aggressive in communicating high ethical standards in the title industry. A lot has changed in how transactions are processed, the way documents are recorded, and the manner in which money is transferred. In many cases, our business models have not adapted to meet these changes in the marketplace.

Adaptation includes requiring better escrow standards and operating with zero-tolerance for fraud. From a trade association standpoint, we know that working closely with regulators results in a better outcome for the industry that is being regulated. I hear frequent frustration with regulators who "just don't understand our business." The only way to improve their understanding is to determine our standards or best practices, then explain the process and reasons for existing practices to these regulators as they look to fulfill their duties of protecting consumers.

Our cover article on Page 10 digs into the issue of finding industry solutions to mitigate defalcations. Take some time to read this article and think about your company's best practices. If the industry doesn't put forward a solution that establishes standards to mitigate defalcations, we can expect the regulators to step in.

As we shape the future of the industry, we are working to protect its future. This will be done best by involvement from as many professionals in the industry as we can reach. I encourage you to read the Last Word column on Page 38. Tim Evans, a long-time ALTA member, is the new chair of The Title Action Network (Network), which is a new, free initiative designed to energize title professionals to promote the industry's value and position with elected officials. From statehouses to Washington, D.C., elected officials make decisions that affect our industry, and the customers and consumers we serve. That's why it is vital for all of us to get involved and speak with one voice regarding the role we play in the real estate process. I encourage you and your co-workers to join the Network today. The Network is a one-stop-shop for hearing first about key issues affecting business in your state and on the federal level. The easy-to-use program will allow you to email your elected official with a few clicks. The Network will also provide the key talking points for you to pass on, or you can send your own message. I think you'll like the convenience of this action center.

A huge thanks goes to Diane Evans, Rob Chapman, Richard Welshons, Donna Schmulbach, John Voso, Jr., and Tim Evans for serving on the Network's Steering Committee.



- Michelle Korsmo, ALTA chief executive officer



Decisions, *decisions*...

Why it is important to choose to change!



W. Edwards Deering tells us that “It is not necessary to change...survival is not mandatory.” And we know that this is true, especially in this time of uncertainty and in an industry challenged by regulatory changes. Title and settlement providers unwilling or unable to make the decision to change will likely not survive, much less manage to thrive, in today’s volatile environment.

So how does this apply to your title business? Are you using the same technology, the same tools and approaching business with the same mind-set that you have for the last 10 to 15 years? Or is your business constrained by your software vendor’s inability to be forward thinking, innovative and to provide tools that enable you to dominate in the markets that you serve? If so, then it is time. Time to make a decision. Time to make a change.

What has become status quo, having automated title and settlement production, is no longer enough. You also need precise and easy-to-use account reconciliation. You need real-time views into your operations

What has become status quo, having automated title and settlement production, is no longer enough in itself

via customized and automatic reporting for critical decision making. You need to grow and support your brand at every point of customer interaction. You need sound management tools gained from transaction management and work flow monitoring. You need common sense fraud protection that comes with positive pay and the new efficiencies that can be found with daily electronic bank reconciliations. You need cost savings from electronic document

storage versus boxes and boxes of paper files. You need the expense reductions realized by engaging new and existing partners through electronic information exchange in a digital marketplace. You need to give customers on-demand, 24/7 access to the files they have open with you.

But you cannot stop with integrating capability. It is also critical to choose a business partner that is continually working to keep their finger on the pulse of the industry so you don’t have to, enabling you to reap the benefits of their diligence with tools to keep your business out in front and leading in the markets you serve. You need a partner that acts as an advocate for customers, giving you a voice in legislative and industry matters while working diligently with industry professionals and regulatory agencies to properly translate new regulations into your solution. You need a partner that will give you a voice in the evolution of your software and that is as committed to your success as you are. And you need a partner that is stable and will support your business for years to come.

So make the decision to choose to change. And choose a partner that has expertise in business and business solutions so that your operation will have everything that you need to grow and sustain your high performance year after year. By doing this you choose not just to survive but to ensure that your business thrives.



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choose to change.



FHA Extends Anti-Flipping Waiver Through 2012

In an effort to continue stabilizing home values and improve conditions in communities experiencing high foreclosure activity, the Federal Housing Administration on Dec. 29 extended a temporary waiver of FHA's anti-flipping regulations through 2012.

With certain exceptions, FHA rules prohibit insuring a mortgage on a home owned by the seller for less than 90 days. In 2010, however, FHA temporarily waived this regulation through Jan. 31, 2011, and later extended that waiver through the remainder of 2011. The new extension will permit buyers to continue to use FHA-insured financing to purchase HUD-owned properties, bank-owned properties or properties resold through private sales. It will allow homes to resell as quickly as possible, helping to stabilize real estate prices and to revitalize neighborhoods and communities. The waiver contains strict conditions



and guidelines to prevent the predatory practice of property flipping, in which properties are quickly resold at inflated prices to unsuspecting borrowers.

The waiver continues to be limited to sales meeting the following conditions:

- *All transactions must be arms-length, with no identity of interest between the buyer and seller or other parties participating in the sales transaction.*

In cases in which the sales price of the property is 20 percent or more above the seller's acquisition cost, the waiver will only apply if the lender meets specific conditions.

The waiver is limited to forward mortgages, and does not apply to the Home Equity Conversion Mortgage (HECM) for purchase program.

Get Powerful Advice on Operating and Growing Your Business

After successfully holding five Agents and Abstracters Forums last year, ALTA has again scheduled five forums in 2012 to provide a low-cost and unparalleled opportunity for agents and abstracters to meet with peers, and exchange ideas and opinions on issues that affect the bottom line.

There are five Agents and Abstracters Forums for you to participate in this year. The first forum was held Jan. 29 in Phoenix. The remaining forums will

be March 25 in Louisville, April 22 in Dallas, May 20 in Minneapolis and Sept. 23 in Richmond.

The Forum in Louisville will feature members of ALTA's Abstracters & Title Insurance Agents Section Executive Committee who will share how ALTA advocacy efforts help title agents and their business.

Attendees at the Business Strategies Conference in March can attend the Agents Forum for half price.

ALTA Names Director of Government Affairs

ALTA announced in December the appointment of Jessica McEwen as director of government affairs. In her role, she is responsible for lobbying at the federal level, managing ALTA's PAC and assisting in cultivating the association's grassroots program.

Prior to joining ALTA, McEwen served as legislative assistant to U.S. Rep. Joe Donnelly (D-IN), where she advised the Congressman on

all matters under the jurisdiction of the House Financial Services Committee, the Dodd-Frank Wall Street Reform Act and other legislation.

McEwen graduated cum laude from George Washington University with a Master of Arts in Legislative Affairs. She also graduated cum laude from the University of North Carolina Wilmington with a BA degree in Business Administration Finance.

ALTA Letter to CFPB Highlights Concerns of Second Round of Draft Closing Disclosure

ALTA's RESPA Task Force sent a letter Dec. 23 to the Consumer Financial Protection Bureau sharing concerns about the Bureau's second round of its draft replacement for the HUD-1 Settlement Statement.

On Dec. 13, 2011, the CFPB released two updated versions of a new closing statement called Mimosa and Sassafra. Each of the forms is five pages long. While concerned with both draft forms, the Task Force preferred the Mimosa form because it includes line numbers on the settlement portion of the form. This makes it easier for consumers to identify and locate key settlement items.

"Line numbers serve as a reference point, allowing closing agents to easily direct consumers, lenders, realtors and others to different costs when reviewing documentation of the settlement," the letter said.

However, the Mimosa form presents considerable programming challenges due to the renumbering or elimination of lines and sections on the statement portion of the form. This

will greatly increase the development time and costs incurred for closing system development consistent with the new forms.

"By changing the line or section numbers, the Bureau will increase the cost of software development exponentially, requiring programmers to rebuild the connections between the Settlement Disclosure Form and other documents prepared or served by the system," the Task Force said.

The Task Force encouraged the Bureau to maintain the current section and line numbering on the HUD-1 to the greatest extent possible to allow for faster and less costly software development and implementation.

The Task Force also suggested the CFPB:

- *Remove the settlement fee and settlement cost headings: The new concept of segregating closing costs into "Settlement Fees" and "Settlement Costs" will be confusing for consumers because there is no explanation for the distinction between these*



Consumer Financial
Protection Bureau

categories. Further, without definitive guidance, software developers and closing agents will not know in which category to place certain costs. The Task Force suggests removing these distinctions.

- *Remove the paid outside of settlement column: The new POC column is confusing for both industry and consumers. Consumers are not likely to understand the abbreviations used to complete the column, and the information about when a fee was paid and whether the vendor is an affiliate may not be known to the closing agent. The Task Force suggests returning to the current method of disclosing POC.*
- *Include a section for miscellaneous disbursements: Neither draft contains a section for miscellaneous disbursements similar (or preferably identical) to the 1300 series on the current HUD-1. This section is necessary to*

capture disbursements such as credit card payments, home warranty premiums and similar items paid by either buyer or seller. The Task Force suggests including a miscellaneous disbursements section.

The Task Force also urged the CFPB to segregate the responsibility for completing the combined form, fix the unintended consequences of tolerances, changed circumstances and provider lists and reduce the volume of summaries and disclosures on the form.

The CFPB expects to have its draft rule finished by July 2012. The industry must be actively engaged in this process throughout in order to ensure that the outcome is not harmful to consumers and industry.

Comments can be sent directly to the CFPB at Knowbeforeyouowe@treasury.gov. If you would like to contact ALTA with concerns, send an email to Steve Gottheim at sgottheim@alta.org.

U.S. Supreme Court Hears Oral Arguments in Property Rights Case

The U.S. Supreme Court heard oral arguments Jan. 9 in the case Sackett v. EPA to decide if the EPA violated property rights and right of due process when a couple attempted to build a house in Idaho.

In 2005, Chantell and Michael Sackett paid \$23,000 for a .63-acre lot that sits in the middle of a developed subdivision overlooking Priest Lake in the Idaho panhandle. The lot already had a sewer infrastructure in place. The couple secured local building permits and received a verbal OK from the U.S. Army Corps of Engineers that the property, which has water on it periodically

but isn't adjacent to any standing body of water, is not a wetlands. When the Sacketts started to build their home in 2007, EPA officials, citing the agency's authority under the Clean Water Act, ordered them to stop and restore the property to the way it was before they did any work on it.

The EPA told the couple that if they maintained the land in its natural state for at least three years, they could then seek a permit to build, a process that would cost about \$200,000. Once these requirements were met, only then could they go through the wetlands permitting appeals process. The EPA also said it could

impose a fine of up to \$32,500 a day if they didn't comply.

The Sacketts sought a hearing to contest the EPA's order. The hearing request was turned down by a federal judge in Idaho and by the 9th Circuit Court of Appeals in San Francisco.

Agreeing with the EPA, the judges said the compliance order was like a warning to the landowners that they were violating the law. They weren't entitled to a hearing under the law until the agency had imposed a fine on them, the appeals court said.

The Sacketts then appealed to the Supreme Court. The Sacketts say the issue of whether the

property is a wetland is central to the dispute and needs to be resolved in court now if they're to get their proper due process rights.

In taking on the case, the Supreme Court told the two sides to discuss in their filings whether the EPA's procedures are so unfair that they violate the Sacketts' constitutional right to due process. A ruling in favor of the landowners on those grounds would reverberate beyond the EPA, potentially forcing both state and federal agencies to seek court permission before trying to enforce rules.

ALTA will monitor the case.

NAIC to Analyze Risk-Based Capital for Title Insurers

The National Association of Insurance Commissioner's Capital Adequacy (E) Task Force held a conference call Dec. 14 to develop a subgroup to identify major risks for title insurance and if it makes sense to develop a risk-based capital formula for title insurers or modify the current P&C risk-based capital formula to add risks associated with title insurance.

During a previous call, the NAIC's Capital

Adequacy (E) Task Force described several distinct risks associated with title insurance risks and debated whether they were quantifiable. The Task Force also discussed whether the current property and casualty risk-based capital formula could be adapted for title insurers.

ALTA will monitor this and report any developments.

Congress Extends Flood Insurance until May 31, 2012

On Dec. 17, 2011, Congress extended National Flood Insurance Program (NFIP) authority through May 31, 2012.

The extension was a part of H.R. 2055, the so-called megabus conference report combining the remaining nine appropriations bills to fund the federal government for FY2012.

"ALTA continues to urge Congress to pass a bill that would provide long-term certainty to the

NFIP, ensuring access to affordable flood insurance and ending disruptions in closings when lapses occur," said Justin Ailes, ALTA's vice president of government and regulatory affairs. Last summer, the House passed the Flood Insurance Reform Act of 2011, which would extend the program through September 2016. The Senate has only passed a six-month extension of the program.

Finding Solutions to Protect Escrow Funds

ALTA Brings the Industry Together
to Find Viable Options to Mitigate
Agent Defalcations

Massive losses directly related to agent defalcations have brought increased scrutiny to the title insurance industry. Underwriters have absorbed staggering losses because of the actions of their agents and settlement agents have been rendered insolvent because of employee embezzlements. State regulators have enacted regulation while legislation has been passed to more closely regulate the industry. Meanwhile, underwriters are considering massive changes in escrow accounting standards. >>

By Jeremy Yohe



The prolonged economic depression has put increased pressure on every part of mortgage finance. Not only have bank lending practices been scrutinized and appraisal standards tightened, escrow theft within the title industry is being questioned because it has resulted in the failure of several agencies and insurers.

The agency-principal relationship between a title underwriter and a policy-issuing agent or approved attorney has been limited to the issuance of a title insurance policy. While contracts between title

and demonstrate to the public that escrow theft is unacceptable and treat any escrow theft as the most offensive of any professional misconduct.”

ALTA, Industry Respond

Korsmo said the industry must promote that it takes a number of steps to prevent defalcations, “and that in the rare event that escrow theft occurs, we have an orderly way of compensating victims and making them whole.” Over the past year, ALTA has led efforts to develop industry solutions. One option

Prairie Title and ALTA president-elect. “Underwriters and agents must develop solutions to protect and improve the industry, and ultimately protect consumers. All options need to be considered, with the goal focused on developing a solution that holds agents to a certain standard and defines the circumstances in which underwriters would be more willing to accept increased responsibility for the acts of their agents.”

Other proposed solutions include additional and expanded insurance coverage for agent surety bonds and fidelity bonds; a new type of insurance policy to cover against fraud, dishonesty and negligence of escrow agents in handling funds and documents; an industry ombudsman to respond to consumer complaints and wrongdoing; a national agent database to identify whether an agent is authorized to issue policies on behalf of an insurer and whether they are in good standing, terminated or cancelled; centralized or standardized agent audits; real-time monitoring of agent escrow accounts by insurers; a national net-funding mechanism for bank-to-bank transactions; and establishing an industry-wide self-regulatory organization (similar to the National Association of Realtors) to set minimum standards, enforcement mechanisms and a structure to compensate consumers who are victims of escrow theft.

“If the industry fails to come up with its own solutions, there will be very little that anyone will be able to do to prevent regulators from forcing solutions upon us,” Pellegrini said. “These mandates may have undesired consequences for both agents and underwriters.”

“If the industry fails to come up with its own solutions, there will be very little that anyone will be able to do to prevent regulators from forcing solutions upon them.”

insurers and their agents specifically exclude closing and escrow activities, more states are mandating closing protection letters or holding underwriters vicariously liable for the market conduct of agents.

“When theft of escrow funds occurs, consumers are harmed, business partners lose trust, and the credibility of the entire title industry is damaged,” said Michelle Korsmo, ALTA’s chief executive officer. “It is already difficult to explain to consumers the value of title insurance, and each report of escrow theft reinforces the perception that the industry provides little value to consumers. The industry must embrace a zero-tolerance standard

is creating a standardized agency agreement between title agents and insurers outlining minimum requirements for:

- balancing escrow accounts;
- making escrow accounts available for audit;
- promptly reporting risk to the appropriate insurer;
- complying with the law;
- complying with underwriting standards of the appropriate insurer;
- timely remittance of premiums; and
- timely remittance of policy data.

“This is a sensitive issue, but it’s an industry issue,” said Frank Pellegrini, CEO of Illinois-based

ALTA Escrow Accounting Procedures

With millions of dollars flowing through escrow accounts, it is vital title companies educate employees regarding proper escrow accounting procedures. ALTA's self-study Escrow Accounting Procedures Online Course presents a model system of good managerial practices designed to minimize risk in handling escrow funds. The course is comprised of four Educational Modules, each ending with a set of questions to reinforce the course content, and a valuable Resource Guide.

- **Module 1: Escrow Agent** - Define fiduciary and how it applies to escrow holders; understand the benefits of handling escrow transactions; and become familiar with basic stewardship issues surrounding escrow transactions.
- **Module 2: Escrow Accounting** - Identify the basic elements of internal control; learn steps to limit risks from fraud, forgery and unauthorized or improper wire transfers; and understand and appreciate the need for sound escrow accounting procedures.
- **Module 3: Good Managerial Practices** - Learn the basic elements of general control procedures, including handling incoming and outgoing funds and wire transfers; become familiar with essential records and documents; understand the need for reconciling accounts and see examples of two-way and three-way reconciliations; and identify key duties to be segregated among staff.
- **Module 4: Specific Escrow Control Procedures** - Learn procedures for controlling receipts, disbursements and escrow investment accounts; understand the need for legal assistance when dealing with construction disbursements; and become familiar with escheat - what to look for and what is required.

Go to www.alta.org/lti/escrowaccountingcourse.cfm for info on enrolling.

Additionally, ALTA is working with MISMO on two technology pieces that would be utilized in combating escrow theft. One solution is eRemittance that will support an underwriter's request for information about closed transactions and the agent's response with transaction details including premium amount. The second solution is eAgentValidation, which will support a request for agent status from a lender or LOS and the response from an underwriter indicating whether or not the agent remains in good standing.

"It's the industry's responsibility to take steps to curb escrow theft,"

said Erika Meinhardt, president of National Agency Operations for Fidelity National Title Group. "By proposing industry solutions, we can minimize the unintended consequences on business practices that come from regulatory action and court decisions."

Many in the industry believe pushing more liability for agent actions onto underwriters could ultimately result in the reduction of appointed agents, prohibiting agents from performing closings and withdrawal from markets or entire states, resulting in underserved markets. If more states adopt a strict liability concept, agents also may be

forced to prepare for premium split adjustments because reserves will be impacted.

"If this trend continues, independent agents will find that no underwriter will agree to appoint them and they will disappear," said Bob Philo, attorney at Title Experts and Management Services.

Underwriters Impacted

In 2011, three underwriters were forced to cease issuing new policies because of solvency issues stemming from defalcations and an increase in claims. In February, New York-domiciled Washington Title Insurance Co. became insolvent after reporting higher than normal claims. In July, New Jersey Title Insurance Co. stopped issuing new commitments due to a dramatic increase in losses stemming from agent and/or closing attorney defalcations. One of its agents, TitleServ, abruptly closed in April 2011. Lawsuits against the company say more than \$18 million is missing.

Meanwhile, in September, Southern Title Insurance Corp. suspended issuing new policies due to a significant defalcation by a former title agent coupled with a spike in claims. The underwriter has since been placed into receivership.

Regulator Priority

While escrow theft and regulating solvency of both title agents and underwriters were two main issues addressed by the National Association of Insurance Commissioners (NAIC) last year, it will remain a priority of the NAIC's Title Insurance (C) Task Force in 2012.

According to its 2012 agenda, the Task Force is expected to

coordinate with the Financial Condition (E) Committee to modernize the solvency regulation of title insurance. These efforts may include determining the attributes of recent title company financial failures and developing risk-based capital requirements, early warning tools and risk-focused financial examination guidelines for title insurers.

The Task Force will also examine ways to mitigate the impact of title insurer and agent insolvencies on policyholders. Such efforts may include promoting the use of blanket lender's policies and individual owner's policies to replace policies issued by insolvent insurers; examining the financial failures of title agents; and promoting the use of Closing Protection Letters to mitigate title agent defalcations.

Last year, the NAIC appointed three new working groups focused on different aspects of the title industry. The Title Insurance Market Conduct and Mortgage Fraud (C) Working Group will

review and assist various regulatory bodies in combating fraudulent or unfair real estate settlement activities. Meanwhile, the Title Insurance Financial Reporting (C) Working Group will consider the effectiveness of recent changes in financial reporting by title insurance companies related to the Title Agent Statistical Data Plan Implementation Guideline and to identify further improvements and clarifications to Blanks, instructions, Statements of Statutory Accounting Principles (SSAPs) and other matters. A Title Insurance Guaranty Fund (C) Working Group has been appointed to consider whether a title insurance guaranty fund model law or guideline should be developed.

"Regulators are insisting more and more that underwriters stand behind their escrow agents," Pellegrini said. "Over the years, experience has led to the perception that the industry has given the title agent free access to the underwriter's checkbook. We don't have to go too far to see the defalcations and agents making off

with escrow funds. The underwriters have assumed a lot of the liability over the years and don't have the appetite to take it on the front end."

Jeff Trout, of the Law Office of Jeffery Troutt in Juneau, Alaska, believes that creating a culture of compliance is a needed solution. He said improved communication between underwriters and agents, and improved relationships with regulators, would also help.

"Improving the compliance area would help the industry substantially," said Trout, who served as deputy director for Alaska's Division of Insurance from 2005 to 2009. "Regulators have lots of problem areas, and they consider title to be one of them. It would not take a lot of improvement in the compliance area to persuade regulators that there are better industries to target."

States React

Recently, several states including Nebraska, Illinois, Minnesota, Washington and Maryland have ventured into the territory of expanding agent liability to the underwriters.

In 2004, Nebraska passed a strict liability statute for theft of escrow funds. The legislation requires a title insurer to issue closing or settlement protection covering a proposed insured if the title insurer issues a commitment or title insurance policy. According to the legislation, underwriters are liable for the loss if the title agent steals the settlement funds or fails to comply with written closing instructions.

Mired in several defalcations, including the abrupt closure of Guaranty Title Co., with more than \$4.5 million missing from its



escrow accounts, Missouri passed an insurance reform bill in 2007 aimed at protecting consumers and improving the title insurance industry. The legislation outlines conditions for maintaining escrow and security deposit accounts, prohibits misuse or commingling of real estate closing or settlement funds, with tight restrictions for deposits and disbursements; and requires title companies to actively oversee title agencies writing business on their behalf by conducting annual audits of escrow, underwriting and claims practices.

To implement the law, the insurance director appointed a Title Insurance Advisory Committee to work with the department to come up with the best ways to administer the provisions and create regulations.

Following a \$91 million fraud case and the 2005 convictions of the owners of Chicago-based Intercounty Title, Illinois enacted legislation requiring title insurance companies to maintain reserves for losses independent of any other form of insurance and also provides that title insurance agents acting as

escrow agents must deposit funds in separate fiduciary accounts. Problems persisted in Illinois, which ultimately led to CPL legislation being enacted in January 2011 after it was discovered a title agent continued to issue policies and close deals after it

This created a firestorm resulting in the regulator saying that unless underwriters were prepared to stand by their agents, it wouldn't register any new agents or allow the continued re-registration of current agents. The entire agency framework

“Experience has led to the perception that the industry has given the title agent free access to the underwriters' checkbook. The underwriters have assumed a lot of the liability over the years, and don't have the appetite to take it on the front end.”

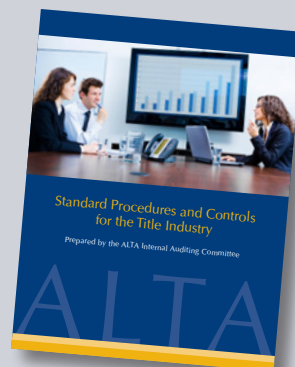
was cancelled by its underwriter. The underwriter took the position that it wasn't responsible for the agent's acts because it had terminated its relationship with the agent.

It faced dismantling. The Illinois Land Title Association worked with the regulators to develop legislation that would protect consumers. Effective Jan. 1, 2011, Illinois title agents are now required to issue Closing Protection Letters to all buyers, borrowers and lenders involved in all real estate closings. The law applies to a title agent who closes the transaction and disburses the funds. It does not apply to an agent that is only doing title work and is not acting as an escrow agent. The law applies to all residential real estate transactions and all non-residential real estate transactions under \$2 million.

In 2009, New York formed a Mortgage and Title Unit to fight thefts committed by members of the title industry. The unit focuses on investigating complaints of alleged

Standard Procedures and Controls for the Title Industry

ALTA developed this guide to help title companies comply with audit standards. The document has a section dedicated to escrow accounting. The standard controls can be applied to any custodial or fiduciary accounts including closing and disbursement accounts and underwriter remittance accounts. Members can access the guide by going to www.alta.org/membership.



fraud involving title insurance transactions.

The state's insurance department cited arrests of two men accused of stealing more than \$7 million in title insurance premiums and settlement funds.

In May 2009, Brian H. Madden, the president of N.Y.-based Liberty Title Agency LLC, was arrested for allegedly misappropriating more than \$5 million in real estate transaction fees collected from property sellers and buyers

written contract with the title agent at the time of the discovery of the defalcation, would have shared in the liability.

The proposed legislation would have required closing agents to have a net worth of at least \$250,000, a surety bond in the amount of at least \$100,000 and an errors and omissions insurance policy of at least \$500,000. Meanwhile, Maryland regulators in 2011 pressed for new CPL and solvency legislation, but nothing has been passed so far.

size of a covered transaction that was approved by ALTA in 2008 was decertified.

The following provision in the single and multiple transaction CPLs clarifies the amount of coverage:

The Company's liability for loss under this letter shall not exceed the least of:

- a) *the amount of your settlement funds;*
- b) *the Company's liability under its title insurance policy at the time written notice of a claim is made under this letter; or*
- c) *the value of the lien of the insured mortgage or the interest in the land insured or to be insured under the Company's title insurance policy at the time written notice of a claim is made under this letter.*

“Our industry is under increased scrutiny, and it will no longer be business as usual.”

and supposed to be paid to municipalities. In September, a federal court sentenced him to 20 months in prison.

In July 2009, Jonathan Boxman, owner of Titledge Insurance Company of New York, was arrested for allegedly defrauding title insurance clients of more than \$1.7 million. In September, a federal court sentenced Boxman to six months in prison.

Defalcations have spurred other states to pass legislation over the past few years.

Last year, Minnesota attempted to pass a strict liability statute similar to Nebraska. The bill would have made title insurers liable for defalcations made by appointed title agents. If no title insurance commitment or title insurance policy was issued in a transaction, each title insurer that appointed or maintained a

While many states have varying CPL requirements, ALTA also provides customers protection in connection to escrow closing activities. ALTA developed a CPL in 1987 that reimbursed the customer named in the letter for losses incurred under certain conditions and as the result of certain actions or inactions by the issuing agent or approved attorney. The title insurer is liable for such reimbursement only when the customer is purchasing the title company's policy. ALTA has revised the CPLs over the years. In December 2011, revised CPLs went into effect for single and multiple transactions to clarify the coverage and amount of liability under the CPL. Each CPL now contains a limitation on the size of the covered transaction that may be established in the letter. The blanket CPL without a limit on the

Courts Chime In

In the courts, liability for the fraud is still being allocated and decisions have been mixed. In one important decision in 2010, the Virginia Bankruptcy Court in *Gold v. Old Republic National Title Insurance Co.* ruled that a closing agent was the agent for the underwriter only for the limited purpose of issuing title insurance, not for purposes of recording the mortgages to be insured.

Meanwhile, the New Jersey Supreme Court ruled in 2010 that underwriters are not liable for defalcations. The Court decided *Stewart Title Guaranty* was not liable for money a disbarred attorney stole from his clients because the misappropriation of funds took place before the attorney acted as the underwriter's agent.

In overturning an appellate court's ruling in *New Jersey Lawyers' Funds for Client Protection v. Stewart Title*

Guaranty Co., Justice John Wallace Jr. wrote that “no agency relationship existed between (the attorney) and the Title Company at the time the funds were misappropriated.”

Meanwhile in Washington, a judge in 2009 affirmed that the state insurance commissioner may hold an underwriter liable for the actions of the company’s appointed agent.

Vendor Solutions

There are also several options available in the marketplace aimed at mitigating fraudulent activity and defalcations. Wells Fargo Home Mortgage has a system that will send a message to the agent’s underwriters to get confirmation that the agent is in good standing. While the current accepted industry standard for account reconciliation of settlement funds is 30 days, RynohLive offers software to companies wanting to mitigate escrow losses by providing automated daily account reconciliation and positive pay functions.

“Every day it seems that there is another announcement of an agency owner being indicted or convicted,” said Dick Reass, president of RynohLive. “This has outraged regulators and consumers, and has altered the underwriter/agent relationship. Our industry is under increasing scrutiny, and it will no longer be business as usual.”

PCN Closings offers an online centralized disbursement service aimed at eliminating the risk of agent misappropriation of escrow funds. Through the service, escrow accounts are managed independently by PCN and segregated by agent. The company says it maintains high levels of fraud and liability insurance and is committed to bonding its

employees for disbursement services. The company said underwriters will be able to assist their agent base in reducing the escrow account risk, which may save on employee and insurance costs.

“The agent will maintain the present level of control, with the exception of managing the escrow account and funding the transactions,” said Pritam Advani, president and chief executive officer of PCN Closings. “This is a key issue because PCN wants the agent to maintain the file control, preserving the business relationship while not having to deal with writing checks, reconciling accounts and going through audits. This will make for a smooth transition and an excellent working environment for all parties.”

He said underwriter risk is reduced or eliminated because an independent third party adds a level of checks and balances, has a professionally managed and controlled disbursement operation and ensures that all accounts are reconciled and balanced to the file level each day.

“A lot of large underwriters are cutting back on smaller agents saying it’s too expensive because there is not enough volume. An option might be to use a smaller agent, if they agree to this platform, because the underwriter doesn’t have to send an audit team out to the agent,” Advani said.

By not offering escrow services, title agents may also be able to reduce expenses by not staffing for disbursements or managing escrow accounts, or eliminating extra insurance coverage for escrow responsibilities.

“The solution doesn’t have to be across the board,” said Tom Frunzi, president of the Phenix Group Inc, who has been retained to help market PCN’s escrow disbursement solution. “Look at your book of agents and segregate it based on risk category. If you have 1,000 agents and you know 150 of them had some type of reconciliation problem in the past, then those are the prime candidates. Or you could take any loan over a given amount and disburse those through an independent third party.”

Another option keeps agents in control of disbursements. Last year, ATS Secured unveiled a platform that allows title agents to electronically disburse and reconcile files. It provides full audit trails for authorized participants and establishes dual controls for funds disbursement.

“There are many potential solutions available and individual companies must decide how they want to respond to this problem,” Korsmo said. “Additionally, there are a number of steps that title industry professionals should identify to reduce the occurrence of escrow theft. These steps should be communicated to regulators and the public to create awareness that the title industry is serious about combating this criminal behavior.”



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

DATA TRACE

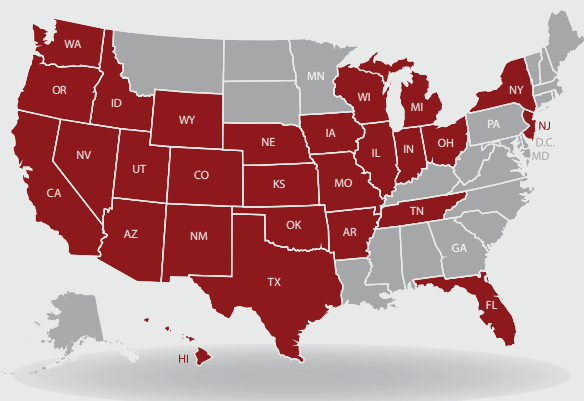
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STRENGTH IN NUMBERS

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COVERAGE

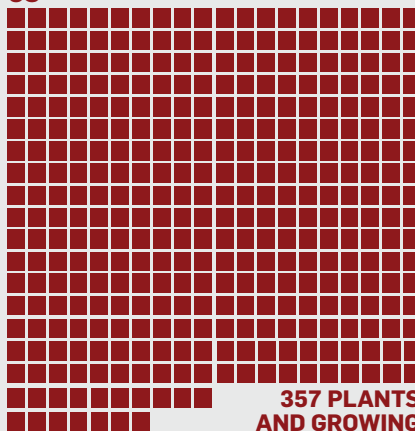
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Underwriter Market Share Nine-Month 2011 Versus Nine-Month 2010

Company Name	Nine Month YTD Total Premiums Written - 2011	Market Share	Nine Month YTD Total Premiums Written - 2010	Market Share	Increase/ Decrease in Premiums Written	Market Share
FIDELITY FAMILY						
Chicago Title Ins. Co.	1,150,287,956	16.7%	1,149,064,686	16.7%	1,223,270	-0.1%
Fidelity National Title Ins. Co.	859,396,027	12.5%	1,020,098,292	14.8%	(160,702,265)	-2.4%
Commonwealth Land Title Ins. Co.	356,451,051	5.2%	350,413,200	5.1%	6,037,851	0.1%
Total - FIDELITY FAMILY	2,397,276,369	34.7%	2,558,427,267	37.2%	(161,150,898)	-2.5%
FIRST AMERICAN FAMILY						
First American Title Ins. Co.	1,687,991,395	24.5%	1,736,359,949	25.3%	(48,368,554)	-0.8%
First Canadian Title Ins. Co.	95,621,806	1.4%	88,526,966	1.3%	7,094,840	0.1%
First American Title Ins. Co. of OR	22,870,759	0.3%	28,971,728	0.4%	(6,100,969)	-0.1%
First American Title Ins. Co. of LA	20,479,487	0.3%	1,655,431	0.0%	18,824,056	0.3%
Total - FIRST AMERICAN FAMILY	1,856,553,416	26.9%	1,882,861,585	27.4%	(26,308,169)	-0.5%
STEWART FAMILY						
Stewart Title Guaranty Co.	813,820,289	11.8%	875,210,867	12.7%	(61,390,578)	-0.9%
Stewart Title Ins. Co. of NY	112,479,688	1.6%	88,413,197	1.3%	24,066,491	0.3%
Total - STEWART FAMILY	939,954,744	13.6%	971,839,611	14.1%	(31,884,867)	-0.5%
OLD REPUBLIC FAMILY						
Old Republic National Title Ins. Co.	869,964,820	12.6%	717,154,369	10.4%	152,810,451	2.2%
Mississippi Valley Title Ins. Co.	13,778,930	0.2%	13,391,345	0.2%	387,585	0.0%
Total - OLD REPUBLIC FAMILY	894,496,808	13.0%	736,126,522	10.7%	158,370,286	2.2%
FAMILY TOTALS	6,088,281,337	88.2%	6,149,254,985	89.5%	(60,973,648)	-1.3%
INDEPENDENT COMPANIES						
National Title Ins. of NY	192,428,862	2.8%	202,702,699	3.0%	(10,273,837)	-0.2%
Title Resources Guaranty Co.	139,875,162	2.0%	89,324,687	1.3%	50,550,475	0.7%
Westcor Land Title Ins. Co.	109,114,561	1.6%	89,579,994	1.3%	19,534,567	0.3%
North American Title Ins. Co.	57,887,740	0.8%	49,356,006	0.7%	8,531,734	0.1%
Alliant National Title Ins. Co.	38,859,785	0.6%	32,523,158	0.5%	6,336,627	0.1%
Investors Title Ins. Co.	38,314,952	0.6%	40,284,424	0.6%	(1,969,472)	0.0%
Connecticut Attorneys Title Ins. Co.	38,017,468	0.6%	36,543,139	0.5%	1,474,329	0.0%
WFG National Title Ins. Co.	29,658,261	0.4%	4,825,074	0.1%	24,833,187	0.4%
National Investors Title Ins. Co.	24,941,450	0.4%	1,828,952	0.0%	23,112,498	0.3%
Security Title Guarantee Corp. of Balt.	21,378,574	0.3%	15,742,168	0.2%	5,636,406	0.1%
Total - REGIONAL COMPANIES	813,770,882	11.8%	720,550,829	10.5%	93,220,053	1.3%
TOTAL - ALL COMPANIES	6,902,052,219	100.0%	6,869,805,814	100.0%	32,246,405	0.0%

Note: Individual numbers do not add up to total number as not all underwriters are listed.
Source: ALTA Third-Quarter Market Share Analysis

If the Title Industry Doesn't Explain Itself, Someone Else will do it for Us – Poorly

Agent-Underwriter Collaboration is not Just Something to Talk About Anymore. It Needs to Happen Now.

With the centralization of information, tolerances on GFEs, title plant infrastructures falling in this decade the way brick and mortar fell several years ago and the virtual consolidation of 14,000 lenders into four, it seems fair to conclude that the title insurance market isn't as fragmented as it once may have been – to the detriment of local agents. Unfortunately, the bulk business that brought security for our industry's defenders at one time is now gone.

Over the years, our industry has had to fight Tops, Radian, Group Nine and several others offering a “title alternative product.” If anyone thinks history doesn't repeat itself, stayed tuned. We cannot take for granted what we have had for years: the required use by the GSEs. We, as an industry, must come together for a new beginning – stay together for progress and work together for

success, lest the new and improved mortgage insurance companies (every one of which seems to have \$500 million in capitalization and K street in its collective speed dial) or others, attempt yet again to override the utility of our product.

Why? The answer is nothing new to us. We have done a horrible job explaining our value to our customers, to our regulators, to the politicians and, most of all, to the general public. Our product is forced on the consumer. That is not proof of our utility. It is the agent that can provide the proof of utility and the underwriter who should help him or her do it. ALTA can help and does, but cannot do it alone, nor can it.

The remedy is clear if both agent and underwriter truly want to survive. The “new and improved” MI products won't protect the homeowner – just the lender. We don't have to search too hard to see the disparate interests

that arise between those parties when the well goes dry.

In the 1970s, I saw a whole town unable to sell its homes because of a claim in the town. Suddenly, people were lined up outside my office to buy title insurance. My friend and colleague, Steve Winkler, told them (and a crowd at a town hall meeting) that they didn't need title insurance because one of the folks in the town's subdivision had an owner's policy. We would defend based solely on that. Nevertheless, we had to stay open and sell owner policies long into the night. For a moment in my 38 years in this business, people wanted our product en masse. There have been plenty who wanted it in hindsight, when they lost their homes to heirs or for 70 other reasons. But the fact remains, for less than the price of collision insurance on a used car, one can buy protection by paying only one time for protection that lasts essentially forever. One fee. No annual premiums. Yet we are the quiet industry, no AFLACs, Geicos or Progressives among us. So, we need to act.

How many in the general public actually understand the concept of title insurance? Our industry needs agents to get the word to the people in Congress, to state legislatures, to mainstream columnists who just don't get it and to insurance commissioners who have “90,000” letters on their desks about health insurance. Agents and title insurance companies need to work together. ALTA is a

fantastic place for this to start, but we have to go beyond that. State title associations need agents. They are local, where much of the action must happen. There are products and services that enable small agents to become Goliaths for those who “get it.” Survival of the fittest doesn’t mean the strongest, it’s always meant those best able to adapt.

“Small businesses will be in vogue this year and definitely have the collective ear of Congress.”

In spite of this, too many insurance companies need margins and will take business from agents, right New York? Let’s not deny it. My own company has pledged not to do so. We have a different model and are more agent-dependent. But, in all honesty, even we will try to keep a deal in house if we can. So why help each other? Underwriters (all of us) have always had a love/hate relationship with agents. Agents can get access for trade organizations and even underwriters to political places they could otherwise not reach. That is how an agent helps the title insurer. But this cannot be a one-way street. How do we underwriters help the agent? There are options. Local agents centralizing with a large underwriter can position small businesses to compete against the large, centralized operations of others. To be brutally frank, small businesses will be in vogue this year and definitely have the collective ear of Congress.

One clear result of the housing market’s consolidation is that orders

simply don’t come from as many lenders (or builders or real estate agents) any more. There is a clear hierarchy, with much of the business coming from national mortgage lenders. That means that the two-county agent is not as appealing as he or she once was. We still need that local expertise and experience, however. There may be a place for

centralized processing, but there are still far too many transactions that require a local touch. We, and your underwriter may, recognize we hang together, or we hang separately.

The answer for many of the small firms out there is collaboration. Partnership. Let’s be honest – it’s not something we as an industry have done very well in the past. We are competitive. We have very few ways to differentiate our services (compared to other industries and products). We take our work very, very personally. Your underwriter needs your political contacts, you need its national platform. ALTA needs both to survive.

But the fact of the matter right now is that more and more business comes from national sources, even as overall origination volume shrinks. There is a very real place for the small, experienced title agent or settlement services provider. But “business as usual” will no longer work. Plus, REOs and short sales are your lexicon today, but weren’t two years ago.

Of course, it’s very easy for a national firm to tell a small business to just up and “grow your geographic footprint.” What’s not always so easy is doing it. This is where underwriters of all size need to play a prominent role. We have the resources and expertise to put agents together in a way advantageous to those businesses. We have the means to help the little guy survive. And it’s in everyone’s interest to do so.

The overall quality of any product having anything to do with the housing transaction is under tremendous scrutiny right now by the CFPB, which has little understanding of what we really do. Fairly or not, the title industry needs to come together to explain itself in terms anyone can understand. We need to pay more attention than ever to the quality of our products. And we have to do so as our margins continue to deteriorate in the face of staggering compliance costs. Collaboration among agents, as well as between agents and underwriters, is not just a “nice-to-have” in this climate.

It’s time for agents and underwriters to reach out to each other. Contact your title insurance company to see how their plans include you. Let’s get the dialogue started. Underwriters, ALTA, you and the state land title associations all need to hang together.

It is a must. ■



Joseph Drum is executive vice president for WFG National Title Insurance Company, overseeing all agency operations. He has more than

38 years experience in the title insurance industry and was a quarter finalist in the Nebraska Golden Gloves 1968 and 1969. He can be reached at drum@wfgnationaltitle.com.

Preview: 2012 Business Strategies Conference

Speakers Will Focus on Engaging Consumers While Offering Advice on Legal Issues, Sales and Strategy, Productivity and Industry Practices. Register by Feb. 24 and save.

While Louisville is commonly referred to as the Whiskey City, it's also earned the distinction as Possibility City. A community built on never saying "No," citizens of Louisville are known for rolling up their sleeves and making sure things happen. That's exactly the same mantra attached to ALTA's Business Strategies Conference, where attendees can "roll up their sleeves" and learn vital information to be successful in the market.

The way the industry operates is facing a tremendous change. From the creation of new mortgage disclosures to the handling of escrow funds and the closing table, title professionals must keep abreast of how these changes will impact operations.

This year's 2012 Business Strategies Conference, which will be held March 25-27 at the Marriott Louisville in Louisville, Ky., will help attendees understand how to promote consumer shopping, explain

title insurance in simple terms and find solutions to reduce fraud and escrow theft. In addition to the general sessions, the conference features 16 professional development sessions that will provide information addressing legal issues, sales and strategy, productivity and industry practices.

"While the past few years have taken a toll financially, members of ALTA continuously strive for improvement of the title insurance industry by constantly becoming better informed and educated," said Chris Abbinante, ALTA's president. "Surviving and succeeding in today's market requires a diverse knowledge of all the moving pieces that continuously impact the industry. This conference is the conduit to helping title professionals prosper."

Abbinante will give a presentation during the opening general session March 26 titled "Explaining a Policy So Grandma Understands." ALTA policy forms have evolved tremendously over the years, and now provide unquestionably the best coverage ever available to purchasers of one-to-four family residential properties. Abbinante will help



attendees learn how to explain to consumers what's covered and what's not in simple terms.

“While we like to describe what we do, in a professional and craftsman-like manner, too often we lose the audience,” he said. “We lose them because of our jargon and attention to detail. What, I believe, is important to those outside the industry – particularly the consumer – is the benefit that they receive because of what we do. I encourage us to focus on being able to discuss the benefits that the consumer receives when they buy our products and services. It’s the peace of mind and knowing that they own their home and we insure that benefit.”

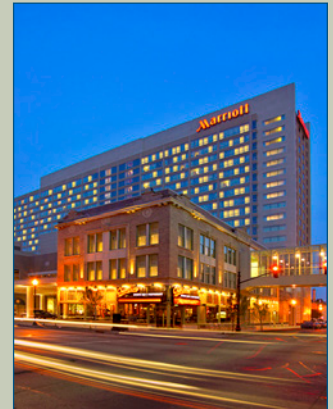
Following Abbinante, several members of ALTA’s RESPA Task Force will take the conversation of reaching consumers even further. Mary Schuster of RamQuest Software, Alison Kaspar Gareffa of Old Republic Title Insurance Co. and Wesley Lasseigne of Lenders Title Co. will join a member of the Consumer Financial Protection Bureau to explore consumer

Hotel Accommodations

The Louisville Marriott Downtown is the hotel for the 2012 Business Strategies Conference. Participants are responsible for reserving their own hotel accommodations. Be sure to ask for the American Land Title Association group rate to reserve your hotel room. **The hotel reservation cut-off date is Monday, February 27, 2012.**

Louisville Marriott Downtown

280 West Jefferson Street
Louisville, KY 40202



Reservations: Visit www.alta.org/meetings for web reservations or call 1-800-266-9432 and let them know you are with ALTA.

Rates: \$129 per night (not including room taxes and fees)

engagement and making the real estate transaction more transparent.

“The panel will address what the CFPB is doing to engage consumers and how title agents can become involved in the process and capitalize on this trend,” Schuster said.

On March 27, the general session will address an issue that not only impacts the industry, but consumers as well, and that’s escrow theft.

Moderated by Jan Clark of Ernst Information Services, the panel titled “Fighting Fraud in the Current Market,” will consist of ALTA President-elect Frank Pellegrini of Prairie Title, Erika Meinhardt of Fidelity National Title Group, Bart Shapiro of the Consumer Financial Protection Bureau and Richard Bramhall of Bank of America Home Loans.



The industry experts will discuss findings of a national survey examining the latest trends in mortgage fraud and escrow theft, what best practices companies currently follow to thwart fraud and what solutions the industry believes are the most viable to implement.

“With regulators increasingly assigning liability for escrow theft, and putting regulations together that focus on solvency of agents and underwriters, it is important that this industry provide solutions, or they will be provided to us,” Pellegrini said. “This will be an informative discussion for attendees to get the latest on what the industry is doing to combat mortgage and escrow fraud.”

In addition to the general sessions, the conference will feature 16 professional development sessions broken into four separate tracks (legal, sales and strategy, productivity and industry practices).

In the sales and strategy track, Cheryl A. Jones of Old Republic National Title Insurance Company and Jeanine W. Johnson of Jeanne Johnson & Associates will provide a “workshop” presentation titled “Train the Trainer” to help those wishing to coach staff to better understand complex title topics. A blueprint handout will show specific skills for teaching title abstractors, examiners and closers complex title issues. The instructors will actively demonstrate ways for you to teach to all four adult learning styles. The “rights,

title and interests” section will provide specific knowledge so staff can identify title issues as “givens” or “problems” to be resolved.

In the productivity track, Larry Godec of First American Title Insurance Co., Rob Chapman of Old Republic National Title Insurance Co., John Arcidiacono of Stewart Title Guaranty Co. and Stephanie Silcott of Old Republic National Title Insurance Co. will share strategies on how to “Implement a Successful Social Media Program.”

“Gone are the days of title agency marketing reps who attract business by simply taking customers to lunch. In today’s highly competitive marketplace, title agencies must employ the latest effective marketing techniques to attract new customers



4 REGIONAL MEETINGS LEFT

Why Should You Attend?

- *Exclusive meeting for agents and abstractors*
- *Share ideas and experiences*
- *Learn from others to improve your operation*
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AMERICAN LAND TITLE ASSOCIATION Agents and Abstractors Forum

March 25, 2012
Louisville, KY

April 22, 2012
Dallas, TX

May 20, 2012
Minneapolis, MN

September 23, 2012
Richmond, VA

and demonstrate their value,” Arcidiacono said. “We will focus on the value of an effective website, social media marketing and other online media to gain the attention of prospective clients and demonstrate value to retain customers long term.”

Providing a frank discussion on the impact of agency defalcations, Eugene McCullough of Southern Title Insurance Corporation will share how the acts of one bad agent put an underwriter out of business in one of four sessions focused on industry practices.

This session will discuss the evolution of the agent/underwriter relationship and why changes have occurred over time.

“In today’s market, agents need to do more than just fill out applications to maintain an old, or secure a new, agency relationship,” McCullough said. “They should proactively provide underwriters and customers with tangible evidence of their routine exercise of best practices. Agents should showcase the experience of their staff, the quality of reconciliation practices, the depth of searches, among other things, in an effort to clearly identify an agency as one that stands out in a crowd.”

In an effort to provide education for a growing segment of ALTA membership, four professional development sessions have been geared toward attorneys. In one of the legal sessions titled “Sure Fire Ways to Get Sued (And How to Avoid Them),” Andy Maloney of Nashville Title Insurance Co. will examine reasons why title agents get sued and how to avoid those “sticky situations.”

“No matter how carefully a title agent follows the law, unhappy

clients can usually find legal fault with their agent’s conduct,” Maloney said. “Attendees will learn the basic elements of risk management as we review and discuss professional and fiduciary responsibilities, analyze mandatory and voluntary disclosure, identify risky behavior and ways to lower risk profile. I’ll also offer

possible solutions through real-world case studies.”

To cap the conference, the closing luncheon on March 27 will feature bourbon historian Michael Veach, who will share the folklore, rich history of tradition of bourbon, and the land disputes it sometimes created. ■

Educational Opportunities Available at ALTA’s Business Strategies Conference

ALTA is securing CE & CLE Credits for eight Professional Development Sessions. Attendees will have the opportunity to gain valuable credits required by their states. Make sure to sign in and out at the CE/CLE booth to ensure you get credit for attending.

CE Credits *(All Credits Pending)*

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CLE Credits *(All Credits Pending)*

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A Closing luncheon speaker and bourbon historian Mike Veach shares the folklore, rich history and tradition of bourbon, and the land disputes it sometimes created.

Michigan, Kentucky Court Decisions Impact Use of Equitable Subrogation

The Decisions will have a Direct Impact on the Title Insurance Industry.

While a ruling last year by the Michigan Court of Appeals reinforces use of the equitable subrogation doctrine that allows for the reordering of lien priority, an opinion issued by the Kentucky Supreme Court could lead to the erosion of this doctrine, which could impact the title industry.

Equitable subrogation permits a lender whose loan proceeds are used to satisfy a prior lien to step into the shoes of the first lienholder to determine priority. As an example, a homeowner has a \$100,000 first mortgage (first priority lien) and a \$20,000 balance on a revolving line of credit secured by a lien on the home (second in line).

If the homeowner later refinances the first mortgage and takes out a \$130,000 loan secured by the home, the refinancing lender will generally insist on a subordination agreement with the line of credit lender, thereby

securing first priority. But if through oversight the refinancing lender does not do so, the doctrine of equitable subrogation would generally give the refinancing lender first priority up to \$100,000 (the amount of loan proceeds used to pay off the first mortgage), and third priority (behind the HELOC lender) for the balance of the loan.

The Michigan Court of Appeals issued an opinion Dec. 15, 2011 in *CitiMortgage v. Mortgage Electronic Registration Systems Inc.*, in which the court said equitable subrogation may apply to give a mortgagee who refinances its prior mortgage priority over intervening lienholders, but only where the lienholders are not prejudiced.

In the case, Sherryl and Gregory Catton on Sept. 6, 2000 granted a mortgage to ABN AMRO Mortgage Group. The Cattons then refinanced their loan with ABN AMRO on May

4, 2001. They then obtained a home equity loan from GMAC Mortgage on July 11, 2002, granting GMAC a second mortgage on the property. On Nov. 25, 2002, the Cattons refinanced the 2001 loan once again with ABN AMRO. While GMAC's mortgage was recorded, ABN AMRO was unaware of the GMAC mortgage when it approved the refinance.

After the Cattons filed for bankruptcy on Aug. 22, 2005, Federal Home Loan Mortgage Corporation purchased the property at a foreclosure sale. ABN AMRO's successor-in-interest CitiMortgage Inc. and Federal Home filed a suit to quiet title against GMAC and the Cattons, arguing that ABN AMRO's mortgage had priority under the doctrine of equitable subrogation. The trial court concluded that equitable subrogation did not apply, but CitiMortgage appealed and the Michigan Court of Appeals ruled the state allows courts to use equitable subrogation to alter mortgage priorities.

"... a senior mortgagee that discharges its mortgage of record and records a replacement mortgage does not lose its priority as against the holder of an intervening interest unless that holder suffers material prejudice," the court rules.

Peter Brown, an attorney with the law firm Gallagher Law Firm, said the CitiMortgage decision makes it very clear that equitable subrogation is available.

"This case solidifies the idea that if the holder of a first mortgage

refinances its own mortgage, the subsequent mortgage will take the position of the first mortgage and maintain priority over an intervening mortgage based on the application of the doctrine of equitable subrogation,” Brown said.

Despite the holding in CitiMortgage, it is important to note that the “mere volunteer” rule is still applicable and equitable subrogation will not be available to third-party refinancing lenders that have no pre-existing interest in the property.

“Therefore, before closing a refinance transaction, lenders and their title insurers should be sure to closely examine the title of the subject property to conclusively determine the existence of any intervening liens,” Brown said. “If an intervening lien is of record, the intervening liens must be paid off and discharged. However, in light of the court’s ruling in CitiMortgage, if an intervening mortgage is missed, a refinancing lender may have an opportunity to use the doctrine of equitable subrogation in certain circumstances

application of the doctrine of equitable subrogation in the Bluegrass State.

The Wells Fargo decision in Kentucky was issued in a consolidated appeal of two different cases in which the priority of general tax liens of the Commonwealth of Kentucky was at issue. In one case, the tax lien predated a mortgage that later resulted in foreclosure. In the other case, the tax lien was recorded after a mortgage but before a refinance that paid off the mortgage was recorded.

Special Justice Lawrence L. Jones II, who wrote the court’s opinion, discussed the three approaches courts around the country take with respect to equitable subrogation:

- 1 The majority rule: actual knowledge of an existing lien precludes the application of equitable subrogation but constructive knowledge does not.
- 2 The minority rule: barring equitable subrogation where the subsequent lienholder has actual or constructive knowledge of an existing lien.
- 3 The Restatement rule: permitting the application of equitable subrogation even if the subsequent lienholder

■ The Kentucky Supreme Court ruled that “equitable subrogation must not be used to ‘bail out a negligent title insurer.’”

to obtain priority over the intervening mortgage.”

Meanwhile, on April 21, 2011, the Supreme Court of Kentucky issued a decision in Wells Fargo v. Commonwealth that could have a significant result on Kentucky courts’

actually knows or should know about the prior lien as long as the prior lienholder will not be prejudiced by application of the doctrine.

The court then found that “a balancing of the equities favors the second approach.”

Legislative Fix in Kentucky

Rep. Arnold Simpson has introduced legislation supported by ALTA that would bring Kentucky back in line with nearly every other state in the country allowing the use of equitable subrogation.

In its ruling, the Supreme Court of Kentucky said “... mortgage lenders should be held to a higher standard for purposes of determining whether the lender acted under a justifiable or excusable mistake of fact in failing to duly investigate prior liens.”

The court went on to say “equitable subrogation must not be used to “bail out a negligent title insurer.”

“Those title insurers are engaged in the very profitable business of assuring that their lending institution customers receive a clear title by insuring such,” the court ruled.

The court’s holding in Wells Fargo was narrowly limited to a conclusion that “a professional lender who has actual or constructive knowledge of an earlier recorded general tax lien may not benefit from an equitable reordering of the liens.”

According to the law firm Frost Brown Todd, the holding does not expressly affect equitable subrogation in the context of competing “professional lenders,” for example, so the ramifications of the decision could be limited.

“The language could easily lead to further erosion of equitable subrogation, something that would significantly affect lenders, title insurers and their agents,” the law firm said. ■



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Virginia-based Southern Title Placed Into Receivership by Court

Three months after suspending the issuance of new policies due to financial difficulties, Southern Title Insurance Corp. was placed into receivership Dec. 20 by the Circuit Court of the City of Richmond.

Virginia Commissioner of Insurance Jacqueline K. Cunningham was appointed deputy receiver in an effort to rehabilitate the company. A moratorium has been placed on the payment of claims until the deputy receiver completes an

evaluation of Southern Title's financial condition.

Southern Title and Virginia's State Corporation Commission determined that the receivership was necessary to protect interests of policyholders and creditors.

Southern Title, a Virginia-domiciled insurer headquartered in Richmond, Va., is licensed to do business in 21 states.

Southern Title voluntarily suspended the issuance of new title policies on Sept. 15, 2011. The SCC issued an order of suspension on Sept. 19.

An impairment order was issued by the SCC on Nov. 4 because the company no longer met minimum capital and reserve requirements. Southern Title experienced financial difficulties because of agent defalcations in Texas and the rise in title insurance claims arising from that alleged misuse of funds.

In September, Southern Title directors and officers reported they were confident the company was solvent and there was adequate surplus to pay all current and future claims of current policyholders.

Ed Buyalos, chief financial auditor for the Virginia Bureau of Insurance, indicated an adverse development in claims may have meant the company couldn't achieve a successful solvency runoff. The Bureau of Insurance issued an impairment order requiring Southern Title to restore its capital to a minimum level of \$4 million. Reportedly, Southern Title had \$1 million of surplus.

Buyalos said the Bureau will attempt to find a buyer or resort to a runoff.

First American Offers Solution to Support HARP 2.0

First American Title Insurance Co. announced the availability of Quick Start HARP, an advanced title, signing and settlement program that features proprietary technology designed to process refinance closings under the redefined Home Affordable Refinance Program (HARP 2.0).

First American's Quick Start HARP solution supports the revised program by helping

mortgage lenders develop their own "push" or "pull" approach to soliciting homeowners.

In both cases, First American's automated title technology delivers a title commitment to the lender in seconds, rather than a non-binding title "decision."

The company said the program significantly reduces title premium rates and settlement costs for qualified refinances.

Existing-Home Sales Overestimated by 14.3 Percent from 2007-2010

The National Association of Realtors (NAR) on Dec. 21 released revised existing home sales with downward adjustments to sales and inventory data since 2007. Although rebenchmarking resulted in lower adjustments to several years of home sales data, the month-to-month characterization of market conditions did not change, according to NAR. There are no changes to home

prices or month's supply. The 2010 benchmark shows there were 4,190,000 existing-home sales last year, a 14.6 percent revision from the previously projected 4,908,000 sales. For the total period of 2007 through 2010, sales and inventory were downwardly revised by 14.3 percent. A divergence developed in 2007 between sales reported by MLSs and sales determined by a U.S. Census benchmark.

First eRecording Received in Hennepin County, Minn

eRecording Partners Network (ePN) announced it submitted the first electronic real estate documents to Hennepin County, Minn., in December.

The new electronic process offers benefits to both the submitters and to the county, according to Tom Kay, eRecording project manager at Hennepin County. "In addition to the travel and postage savings, our customers can expect to get their recorded copy returned to them electronically in one or two days, as opposed to one or two weeks," Kay said.

To submit the first electronic real estate

documents to the Hennepin County Recorder's Office, ePN worked with Old Republic National Title Insurance Co. Linda Larson, division manager for Old Republic, is excited about the new way to do business with Hennepin County.

"One of the greatest internal challenges for title agents and underwriters today is the timely recording of documents," Larson said. "In our efforts to reduce fraud and minimize claims, eRecording may be the single greatest tool that has become available to our industry in recent years."

System to Identify Recording Jurisdictions Completes 30-Day Comment Period

The Property Records Industry Association (PRIA) announced that the list of Recording Jurisdiction Identification (RJID) numbers that has been developed for identifying recording jurisdictions completed a 30-day review and comment period.

PRIA said the RJID project was initiated because there is no national identification system that encompasses all recording jurisdictions. While a FIPS code normally works at the county level, it does not adequately cover all recording jurisdictions, especially those involving a city, district or borough.

The reasoning behind the RJID table is to provide a uniform code system and a central location for all industry participants to access the codes.

The intent is for the RJID number to be used following the lender's application process, passed to the title agent doing the research and then back to the lender's loan origination system for release processing. PRIA said this system will ensure that all recording fees are being calculated by the proper recording jurisdiction and recordable documents are being sent to the correct jurisdiction.

First American Makes Move to Increase Texas Market Share

First American Title Insurance Co. signed an agreement in December to acquire Hexter-Fair Title Company, a Dallas-Fort Worth-based title and escrow company founded in 1916.

The transaction was expected to close in January pending regulatory approval. Terms of the deal were not disclosed. With the acquisition of Hexter-Fair, First American will increase its market share by adding 21 new offices

in the Dallas-Fort Worth metropolitan area.

In 2010, First American captured 19.2 percent of the Texas market with \$203.7 million premiums, according to ALTA market share data. Fidelity had 38.7 percent market share with \$410.7 million in premiums, while Stewart had 19.3 percent of the market with \$210.6 million in premiums. In all, \$1.1 billion in premiums were generated in Texas in 2010.

According to the Texas Department of Insurance Hexter-Fair Title issued 44,846 policies in 2010, producing \$20.6 million in premiums in 2010. The company reported net income of \$955,486 in 2010.

Hexter-Fair's current owner, David Fair, will remain as chairman of the new entity, Hexter-Fair/First American Title Company LLC, and will continue to be an integral part of the leadership team.

"This acquisition will significantly enhance First American's title operations in Dallas-Fort Worth," said Dennis Gilmore, president of First American Title Insurance Company. "Together with Republic Title, the new entity will increase our range of service in that area and further our strategy to grow market share in the largest title and settlement services markets."

Louisiana Land Title Association Names Title Person of the Year

Stephen Sklamba, vice president and Louisiana underwriting counsel for WFG National Title Insurance Company's Louisiana agency group, was awarded the Louisiana Land Title Association's (LLTA) Title Person of the Year Award.

Sklamba also was named LLTA's Title Person of the Year in 2003. The award is designated annually by the president and board of directors of the LLTA. The recipient generally is someone who has gone above and beyond the norm in

protecting and advancing the title profession in the state.

Sklamba is a past president of LLTA, member of the Board of Directors and served as co-chairman of LLTA's Legislative Committee from 2003 until recently stepping down last year. He also participated in drafting legislation creating the Louisiana Title Insurance Statistical Services Organization (LATISSO).

"Of all the committees, our Legislative Committee is the most active and

requires a great deal of time and effort," said Jack Robichaux, who served as LLTA president in 2010 and 2011. "During the past two years that I was president, Steve and his committee prepared over 14 separate pieces of legislation and spent countless hours drafting and redrafting them within the committee and with legal staff of the various Louisiana legislative committees. On too many occasions to count, Steve traveled to the state capital and met with legislators, their

staff and testified before legislative committees in support of the legislation."

Sklamba has served as Louisiana underwriting counsel for several major title insurers during the past 20 years. He has been a director on the board of the Louisiana Land Title Association since 1992 and is also a past LLTA president. Sklamba's legal practice of 40 years has focused on real estate, title insurance, probate, bankruptcy, creditors' rights and consumer credit laws.

TSS Software Integrates with Investors Title Insurance Co.

TSS Software Corp. announced integration with Investors Title Insurance Co., making the underwriter's products instantly available through the TitleExpress provider network, RealExpress.

This integration allows agents to access Investors Title's iJacket Manager system directly from a TitleExpress order. Information from the order automatically feeds into the iJacket file, eliminating duplicate data entry, and allows for issuance of Insured Closing Letters, selection of electronic commitment

and policy jackets, and automatic production of remittance reports. Investors Title Insurance Company offers this service at no charge to TitleExpress users.

"We are pleased to have Investors Title Insurance Company offer its agents using TitleExpress the ability to import their file information directly into iJacket Manager," said Barbara Miller, president and chief operating officer of TSS. "This integration significantly improves agent productivity and eliminates the potential for re-keying errors."

Indiana Title Company Makes Acquisition

Evansville, Ind.-based Bosse Title Corp. recently completed the purchase of Evansville Titles.

"The acquisition marks the joining of two of the oldest, largest and most highly respected title companies in the Evansville market, significantly increasing Bosse's share of the local title market," said Jeff Bosse, founder and president of Bosse Title.

Founded in 1929, Evansville Titles was the oldest title company in Southwestern Indiana. Bosse Title has operated for more than 37 years. The staff of the companies

have over 300 years of experience. Christa Kingsbury, who led the Evansville Titles staff, now is director of closing services for the combined company. Teresa Fruit continues as director of title services.

"We realized that the two companies had very similar corporate cultures and our complementary strengths – experience, expertise and sound transactional knowledge – provided the foundation for a truly great title services company," said Jeff Bosse II, the company's vice president and chief operating officer.

North Dakota Guaranty and Title Selects New President

North Dakota Guaranty and Title Company announced that Tim Pearson has been named the company's new president. He previously served as a senior vice president of the company and has 32 years of

experience in the title industry in southern California and North Dakota. He currently serves on the Stewart Title Guaranty National Advisory Board and is active in the American Land Title Association.

ServiceLink Announces New President, Names General Counsel, Adds Exec to Default Team

ServiceLink, a Fidelity National Financial company that provides end-to-end origination and default solutions for 15 of the top 20 mortgage lenders and servicers, appointed Chris Azur as president. Azur has served as EVP and COO of ServiceLink for the past four years, with responsibilities that include the valuations, title and closing operations in both the loan origination and default services markets. Prior to joining ServiceLink, Azur served as EVP and COO of

ATM Corp. since its establishment in 1993.

ServiceLink also named Donald Blanchard as general counsel and David Holt as senior vice president default strategy and execution. Previously, Blanchard was deputy general counsel for Lender Processing Services. He's also served as general counsel at Landsafe, Inc., the settlement service affiliate of Countrywide Home Loans, and LSI. Holt previously served as executive vice president and chief operating officer of LPS's Default Division.

Stewart Appoints New Executive Team

Stewart Information Services Corp. announced a new executive team. Recently appointed CEO Matt Morris created the new executive team to capitalize on Stewart's strengths and further align the organization for growth and continued market leadership in the real estate services industry. The executive team includes: Glenn Clements, group president, direct

operations; George Houghton, group president, agency operations; Jason Nadeau: group president, mortgage and title services; Mike Skalka, group president, international title operations and chief legal officer; Allen Berryman, chief financial officer; Murshid Khan, chief information officer; and John Arcidiacono, senior vice president of marketing.

NextAce Co-Founder Rejoins Company

NextAce Corp., a provider of automated real property intelligence, announced the appointment of Mike Armstrong to vice president of sales. In this position, Armstrong will lead all sales efforts, manage client acquisitions, and expand customer and vendor relationships.

Armstrong co-founded NextAce with Don Cantral in 2003. Having started his title industry career in 1982, Armstrong left NextAce in 2008 to garner broader experience in the title industry. Since 2008, Armstrong held senior management positions with Data Trace and Property Info.

Urban Lending Solutions Names President

Urban Lending Solutions (ULS) promoted Michael Forgas to president. Forgas is the former chief executive officer of National Real Estate

Information Services and was successful in growing it into a nationally recognized leader in the title, appraisal and settlement services business.

Submit Your News

Have news about your company? Want to announce new hires or promotions? Send the information to Jeremy Yohe at jyohe@alta.org.

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Cindy Fried <i>Fidelity National Title Ins. Co.</i>	Amy Kaspar <i>Kasparnet, Inc.</i>	Jeffrey Noble <i>Old Republic National Title Insurance Company</i>
Alison Gareffa <i>Old Republic National Title Insurance Company</i>	Brandt Keefe <i>Stewart Title Guaranty Co.</i>	Mary Shaw Nurre <i>Multi-State Title Agency, LLC</i>
Norwood Gay <i>Attorneys' Title Fund Services, LLC</i>	Ross Keller <i>Trail County Abstract & Title Company</i>	Edward Oddo <i>First American Title Insurance Company</i>
Robin Gilroy <i>First American Title Insurance Company</i>	Michael Kennerley <i>Signature Information Solutions</i>	Michael O'Donnell <i>Riker, Danzing, Scherer, Hyland & Perretti LLP</i>
Celia Goode-Haddock <i>University Title</i>	Nicholas & Barbara Koester <i>Chicago Title</i>	Donald Ogden <i>First American Title Insurance Company</i>
Mark Goodman <i>Commercial Partners Title</i>	Natalie Lancaster <i>Stewart Title Guaranty Co.</i>	Jane O'Sullivan <i>Old Republic National Title Insurance Company</i>
Steve Gottheim <i>American Land Title Association</i>	Paul Langner <i>Douglas County Abstract Company</i>	Mary Pellegrini <i>Prairie Title</i>
Mark Greek <i>First American Title Insurance Company</i>	Wes Lasseigne <i>Lenders Title Company</i>	Joe Perna <i>First American Title Insurance Company</i>
Robert Griffiths <i>ACS Knox Title and Closing Services</i>	Jeff Lees <i>Old Republic National Title Insurance Company</i>	Christine Provost <i>First American Title Insurance Company</i>
Nick Hacker <i>American Land Title Association</i>	Deborah Lewis <i>Taylor Abstract & Title Company, Inc.</i>	Jay Reed <i>First American Title Insurance Company</i>
Samuel Halkias <i>Old Republic National Title Insurance Company</i>	Chris Lieser <i>Old Republic National Title Insurance Company</i>	Joe Reinhardt <i>Fidelity National Title Ins. Co.</i>
Julie Han <i>Closing Corp.</i>	Michael Lucksinger <i>Highland Lakes Title</i>	Lori Rice <i>First American Title Insurance Company</i>
Bob Harris <i>Title Services, Inc.</i>	Derek Lynch <i>Old Republic National Title Insurance Company</i>	Mark Rosser <i>First American Title Insurance Company</i>
David Hartman <i>Old Republic Default Management Services</i>	Donald McFadden <i>McFadden & Freeburg</i>	Karen Saez <i>First American Title Insurance Company</i>
Dan Hassen <i>Old Republic National Title Insurance Company</i>	John McGrath <i>First American Title Insurance Company</i>	Donna & Barry Schmulbach <i>Stewart Title Guaranty Co.</i>
Charles Hayden <i>Old Republic National Title Insurance Company</i>	Dan Mennenoh <i>H. B. Wilkinson Title Company</i>	Sandra Schoen <i>Old Republic National Title Insurance Company</i>
Chaney Haynes <i>Old Republic National Title Insurance Company</i>	Edith Michalski <i>Arrowhead Abstract</i>	Mark Schoen <i>Baton Rouge Title Company, Inc.</i>

John Schuster
RamQuest

James Sellari
Mississippi Valley Title Insurance Company

Robert Sherman
First American Title Insurance Company

Wayne Shupe
Old Republic Title Holding

James Sibley
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Michael Sikora
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Dana Solms
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Victoria Solomon-Robinson
Old Republic National Title Insurance Company

Hayden St. John
Lawyers Title of Topeka, Inc.

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Old Republic National Title Insurance Company

James Stovitz
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Dwain Stufflebeam
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We all know real estate is local. Well, so is politics. In fact, former U.S. Speaker of the House Thomas "Tip" O'Neill once said "all politics is local." With the political climate at what it is today, grassroots efforts have become more important than ever. To really persuade members of Congress, stakeholders in the title insurance industry must get involved and show that issues in question are really important to the folks back home.

The key to success will be getting our message to members of Congress and growing ALTA's political action committee. To address this need, ALTA's Board of Governors last year approved the establishment of the Title Action Network, a free and voluntary organization of title industry professionals affiliated with ALTA. The Network operates exclusively to promote the common business interests of the industry through grassroots advocacy activities.

The Network is dedicated to strengthening the industry's voice and impact on lawmakers in Washington, D.C., and state capitals across America. The Network will encourage ALTA members and non-members to join the Network and have an ownership stake in the outcome of laws and regulations that affect the industry by lobbying and building relationships with policymakers.

Modeled after a similar and widely successful grassroots program implemented by the Mortgage Bankers Association, the program endeavors to engage both members and non-members of ALTA in the legislative process through grassroots activities. I encourage you to check out the Network, as it's easy to become a member and take action because everything can be done online.

I truly find this a great opportunity to grow the stature of the association. That's why I've accepted the responsibility of chairing the Network's Steering Committee over the next year. Other members of the committee are Diane Evans of Land Title Guarantee Co., Rob Chapman of Old Republic National Title Insurance Co., Richard Welshons of DCA Title, Donna Schmulbach of First American Title & Trust Co. and John Voso Jr. of Old Republic National Title Insurance Co., as well as three representatives that will be elected by Network membership. ALTA's CEO, Michelle Korsmo, will serve as the director/secretary.

This is an organization of title industry professionals, and peer-to-peer membership drives will be critical. I encourage you to get involved and recruit others interested in the future success of the title insurance industry.

You can register and find more information at www.alta.org/tan or contact Nick Hacker, ALTA's manager of state government affairs, at nhacker@alta.org.



– Tim Evans, president of Evans Title Agency in Tipp City, Ohio, is chair of the Title Action Network

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