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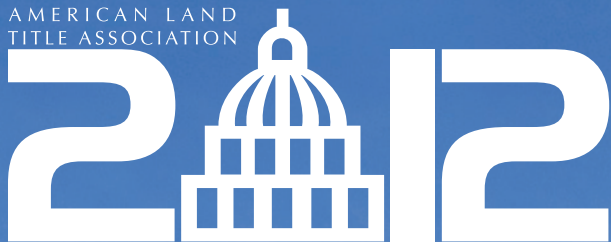
# TitleNews

## Form Revisions Made to Meet Industry, Insured Needs

ALTA's Board Approves Several Forms  
Committee Recommendations, Including  
Endorsements for Minerals, Energy Projects,  
the ALTA 9 Series and a revised U.S. Policy.



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MAY 6 - 9, 2012  
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## Highlights of Tuesday's Conference Sessions

### Presidential Campaign Briefings

In two separate presentations, President Obama's and Governor Romney's advisors\* will give a 2012 Presidential campaign outlook. Speakers will discuss what the federal government can do to help restore the health of the housing market as part of a broader strategy for economic recovery.

### Future of Housing Finance

Panelists will discuss legislative proposals to reform Fannie Mae, Freddie Mac and the housing finance system. They will also discuss how these proposals could impact the real estate economy. Find out what proposals are on the table and how they could ultimately impact your business.

### Federal Conference Lunch

Consumer Financial Protection Bureau Director Richard Cordray\* will discuss the CFPB's priorities, including the creation of new mortgage disclosure forms, non-bank supervision, mortgage servicing and enforcement.

### Consumer Financial Protection Bureau Forms Panel

This panel will discuss the Consumer Financial Protection Bureau's effort to create new mortgage disclosure forms, which will result in a new GFE and HUD-1. This panel will discuss the latest draft forms, what you should expect the proposal to look like when it is released in July 2012 and how implementation of the form will impact the title insurance industry.



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and final program information.

\* denotes that presenter has been invited

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April 22	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
September 9 - 12	New York
September 9 - 11	Ohio
September 12 - 15	Colorado
September 13 - 15	Dixie Land (AL, GA, MS)
September 13 - 15	North Carolina

# TitleNews

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## Focus on the 'Big Rocks' to Get Things Done

In life and in business, it's essential to prioritize to keep focused on what's essential to helping you meet your goals. There's an interesting example illustrating the importance of deciding what matters most in your life, instead of consuming your time with many little things.

A time management expert puts a wide-mouthed Mason jar in front of a group of his over-achieving business students. He puts about a dozen fist-sized rocks in the jar. Once filled to the top, he asks the students if the jar is full. The entire class says, "Yes." Then the speaker shakes some gravel into jar, filling spaces in between the big rocks. He asks the group again if they thought the jar was full. This time, the class said probably not. Next, the speaker dumped sand and then poured water to the brim.

While some of the eager students thought the moral was that no matter how full your schedule, you can always fit more in if you try really hard. However, the expert said the illustration teaches that if you don't put the big rocks in first, you'll never get them in at all. You've heard the phrase "Don't sweat the small stuff," right? It's important to reflect on what are the "big rocks" in your life. Then, put those in your jar first.

At ALTA, our "big rocks" include continually enhancing member benefits, providing education opportunities, holding quality meetings and delivering essential news. Another of our key "rocks" is advocating the importance of the title industry on behalf of our members. This priority takes center stage at our annual Federal Conference and Lobby Day, which is being held this year May 6-9 at the Hyatt Regency Capitol Hill in D.C. Check out a preview of the conference on Page 23. As you read the preview, you will see that many members have made advocating the importance of title insurance one of their priorities, or "big rocks." We need you to join us and share your story with your elected officials.

The cover article starting on Page 10 highlights another of ALTA's important rocks, and that's its policy forms. Our Forms Committee spends a great deal of time reviewing and updating the forms to meet industry and insureds' needs. Standardized forms benefit everyone involved in the mortgage and real estate process.

There was a recent post made on ALTA's LinkedIn Group questioning why ALTA started charging non-members a nominal fee to use the forms. I'd like to thank Francine D'Elia Wirsching, Nicolle Galligan, Ted Rogers and Frank Pellegrini for taking time and explaining the value of being an ALTA member and having access to the forms free of charge. It's clear to me that ALTA membership is a priority for many title professionals. Thank you for the support!



A handwritten signature in black ink that reads "Michelle Korsmo". The signature is fluid and cursive, written in a professional style.

- Michelle Korsmo, ALTA chief executive officer

*Katie Andrews*  
*Florida Agency Operations*



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## ALTA Files Brief in Foreclosure Case Being Addressed by Florida Supreme Court

ALTA joined the Florida Land Title Association (FLTA) in filing an amicus brief with the Florida Supreme Court warning a decision in the *Roman Pino v. The Bank of New York Mellon* case could question the title to all REO properties in Florida.

The plaintiff alleges Bank of New York Mellon filed a fraudulent assignment of mortgage. In response, the bank filed a notice of voluntary dismissal of the foreclosure action. Five months later, the bank refiled an identical action to foreclose the same mortgage.

In the original, dismissed action, Pino filed a motion seeking to vacate the voluntary dismissal on the grounds of fraud on the court and requesting dismissal of the bank's newly filed action as a consequent sanction. The trial court denied Pino's motion, essentially holding that because the prior action had been voluntarily

dismissed, the court lacked jurisdiction, and thus the authority, to consider any relief. Last year, the 4th District Court of Appeals asked the state's high court to decide the case as matter of "great public importance."

When making its ruling, ALTA and FLTA urge the Supreme Court to protect interests of third parties who have purchased, financed and insured title to foreclosed properties.

"Recognition and protection of these neglected interests is vital to the integrity of our judicial system and to the ultimate resolution of the mortgage foreclosure crisis," the brief said.



## South Carolina Becomes 38th State to Restrict Private Transfer Fees

South Carolina became the 38th state to ban private transfer fees as Gov. Nikki Haley signed HB 3095 in February. The new law, sponsored by Rep. Alan Clemmons (R-Myrtle Beach), places a ban on these fees, a dangerous financial scheme that steals home equity, lowers home resale values and adds another layer of difficulty to selling a home.

"The governor and legislature stood up for homeowners by protecting consumers from these

predatory fees," said Teri Stomski, president of the Palmetto Land Title Association. "This bill is an important step in enhancing consumer protections, safeguarding the real estate market and protecting our property rights system in South Carolina."

Alaska, Connecticut, Georgia and Kentucky have pending legislation that also would ban PTFs.

For more information or help pursuing legislation in your state reach out to Nick Hacker at [nick@alta.org](mailto:nick@alta.org).

## Freddie Clarifies Position on Deficiency Judgments for Short Sales, Deed-in-Lieu

Freddie Mac issued a bulletin Feb. 15 clarifying and explaining its position on deficiency judgments for short sale payoffs and deed-in-lieu of foreclosure. Freddie Mac said it updated its Single-Family Seller/Service Guide to reinforce the requirement that the servicer, for itself and on behalf of Freddie

Mac, must waive all rights to pursue payment of the remaining balance owed by the Borrower under a Freddie Mac-owned mortgage for all approved short payoffs and deed-in-lieu of foreclosure transactions that have closed in accordance with the guide and applicable law.

## FinCen Finalizes Anti-Money Laundering Program for Non-Bank Lenders and Originators

The Financial Crimes Enforcement Network (FinCEN) finalized regulations that require non-bank residential mortgage lenders and originators (RMLOs) to establish anti-money laundering (AML) programs and file suspicious activity reports (SARs), as FinCEN requires of other types of financial institutions.

Financial institutions such as banks and broker-dealers have been required to maintain AML Programs for some time. By requiring RMLOs to implement AML Programs, FinCEN is attempting to “fill a regulatory gap that can be exploited by criminals, particularly in the conduct of mortgage fraud.” In November 2011, FinCEN issued a similar proposed rule that would require Fannie Mae, Freddie Mac and the Federal Home Loan Banks to develop AML Programs and require them to make SAR Filings. RMLOs must implement an AML Program and begin SAR Filings by Aug. 13, 2012.

András Teleki, a partner with the D.C.-based law firm K&L Gates, said this regulation could eventually

have some indirect impact on the title insurance industry as more players fall under the AML Program requirements.

“As an indicator of things to come, FinCEN has signaled that it could further expand application of the AML Program requirement to other types of consumer or commercial finance companies and may even extend to real estate agents and persons involved in real estate closings and settlements,” Teleki said.

Taken together, the final rules and the proposed rules issued in November provide additional tools for financial institutions and law enforcement to hold scammers accountable for their fraud and other financial crimes, according to FinCen. Among the many mortgage related scams FinCEN has identified in its reports are false statement, use of straw buyers, fraudulent flipping, flopping and identity theft.

ALTA will monitor these regulations and any impact on the title industry. For more information, email Steve Gottheim, ALTA’s legislative and regulatory counsel, at [sgottheim@alta.org](mailto:sgottheim@alta.org).

## U.S. Supreme Court Hears RESPA Case on Split Fees

The U.S. Supreme Court heard oral arguments Feb. 21 in the case *Freeman v. Quicken Loans Inc.* to decide whether Section 8(b) of RESPA prohibits a settlement services provider from charging an unearned fee only when the fee is divided between two or more parties.

This court’s decision will have implications on Section 8(b) and the dividing/splitting of settlement fees. While HUD’s position has been that unearned fees are prohibited by RESPA regardless of whether or not they are split with another party, appeals courts have concluded RESPA does not regulate overcharges or price increases.

The Supreme Court justices seemed to be divided on the issue.

Justice Scalia was concerned that HUD’s interpretation “altered the most logical and straightforward reading of what appears to be a kick-back statute by taking certain words in isolation and out of context.” Justice Breyer raised a possible concern as to the procedural posture in which HUD’s interpretations were implemented, and

further inquired as to what congressional concerns were expressed in RESPA’s legislative history. Justice Kennedy asked whether RESPA’s criminal ramifications should influence the degree of deference HUD should be afforded. Justice Alito queried whether RESPA in this instance was just a labeling statute in that the lender could have simply listed everything in one category with apparent impunity. Justices Kagan and Sotomayor seemed the most inclined to bow to HUD’s expertise. They expressed concern under the Court’s prior decision in *Chevron U.S.A. v. Natural Resources Defense Council* that an administrative agency charged with rule-making, like HUD, was entitled to absolute deference in interpreting an ambiguity in the statute it is meant to enforce, so long as its interpretation was linguistically reasonable.

ALTA, along with other trade associations, filed an amicus brief requesting the U.S. Supreme Court affirm a lower court’s ruling that undivided unearned fees are not kickbacks and not a violation of RESPA.



## ALTA, OLTA Applaud Ohio Supreme Court Ruling Regarding Cost of Public Documents

The Supreme Court of Ohio on Feb. 29 granted a writ of mandamus ordering the Cuyahoga County Fiscal Officer to provide electronic copies of public documents that have been recorded and scanned into the county's computers to persons requesting such copies at the actual cost of copying the digital images of the requested documents onto a compact disc.

In a 7-0 decision in the case *State ex rel. Data Trace Information Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, the court denied a claim by the fiscal officer that real estate title documents recorded and maintained by the county are not "records" as defined by the Public Records Act. The court also rejected the fiscal officer's argument that a specific provision of state law, R.C. 317.32, authorized him to charge a fee of \$2 per page for copies of recorded documents.

The case involved a policy adopted by the Cuyahoga County Recorder's Office in the spring of 2010 under which that office stopped providing two companies,

Data Trace Information Services LLC and Property Insight LLC, with compact discs (CDs) containing digital images of all the real estate title documents filed in the recorder's office for a fee of \$50 per disc. Instead, the recorder's office announced that in the future it would provide the companies only with paper printouts of the digital copies of recorded documents, at a fee of \$2 per page.

The Ohio Land Title Association (OLTA) applauded the Supreme Court's decision to uphold the Public Records Act.

"This opinion will prevent government entities from charging excessive reproduction fees for public records, and ultimately benefits the consumer," said Mark Bennett, OLTA's executive director.

ALTA also congratulated the Ohio Supreme Court's recognition that public records belong to the citizenry and should be available to everyone at the actual cost of reproduction.

"Their decision affirming that the cost to obtain a reproduction of a public record or document, regardless of format, should be the county's

actual out-of-pocket cost to produce the reproduction is a big win for consumers, lenders and title companies," said Michelle Korsmo, ALTA's chief executive officer. "The title industry's need to access property records in a timely and cost-effective manner is predicated on

providing economical, professional service to everyone in the real estate transaction. When a county starts charging excessively for copies of public records, it ultimately hurts the citizens of the county because they will end up paying more for their real estate transactions."

## ALTA Offers Free Monthly Webinars for Members

In an effort to provide members alternative methods of receiving information, ALTA is now offering a free, monthly 30-minute webinar/conference call presentation titled Title Topics. Past presentations can be downloaded at [www.alta.org/titletopics](http://www.alta.org/titletopics).

The webinar in January was provided by Dick Reass, president of Reliant Title, who discussed the need for escrow standards. In February, Bill Burding, executive vice president and general counsel of Orange Coast Title Family of Companies, reviewed

Freddie's short sale affidavit requirements and how to negotiate changes to ensure you are not taking on additional liability. In March, Brent Scheer, chief financial officer of Agents National Title Insurance Co., discussed three-way reconciliation.

In April, Title Topics will discuss the importance of having an effective website to keep and attract new business. If you would like to submit a presentation proposal for Title Topics, send an email to Jeremy Yohe, ALTA's director of communications, at [jyohe@alta.org](mailto:jyohe@alta.org).



# Form Revisions Made to Meet Industry, Insured Needs

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Projects, the ALTA 9 Series and a  
revised U.S. Policy

**A** LTA first created its policy forms eight decades ago in order to standardize title insurance coverage across the country. Because these policy forms benefit the entire title industry, ALTA launched an initiative a little more than two years ago to fairly distribute the costs of developing and copyrighting the forms and defending the industry. All title agents benefit from having access to ALTA's standardized forms and endorsements. >>

By Jim Gosdin



“Think about the various lenders you work with and imagine the expense you would incur if there were no standard forms,” said Frank Pellegrini, chief executive officer of Illinois-based Prairie Title Inc. “You would have to spend a lot of time talking with lenders’ counsel, negotiating coverages and explaining coverages.”

“Members of the Forms Committee, which include national, regional and bar-related companies, spend countless hours and significant expense to develop and update these forms.”

ALTA members receive a license as part of their member benefits, while companies that are not members and do not wish to become members may either pay an annual license fee, or apply for an Occasional Use Waiver.

“The small, independent non-ALTA agent does not have the technical ability to create its own forms and does not have the credibility in 50 states to market and gain acceptance of its in-house generated forms,” said Randy Barbour, Kansas agency manager for First American Title Insurance Co. “They would have a product with no market that will buy it.”

Ted Rogers, president and CEO of Security Title Guarantee Corp. of Baltimore, said the policy forms licensing initiative is an example of agents and title insurers working in cooperation. No one foisted policy

licensing on agents, rather it was a concept originally proposed by agents.

“The policy forms do not somehow materialize out of thin air,” said Rogers, a member of ALTA’s Forms Committee. “Members of the Forms Committee, which includes national, regional and bar-related companies, spend countless hours and significant expense to attend committee

meetings to develop and update these forms.”

An example of this work was published in April. ALTA’s Board in February approved recommendations from the Forms Committee for several new endorsements and revisions, as well as a revised U.S. Policy Form. The new and revised forms completed a comment period and are now published as final on ALTA’s website. The following is a summary of the approved changes made to benefit insureds and the industry.

### **New ALTA Endorsement 3.2-06 (Zoning – Land Under Development)**

There are two existing ALTA zoning endorsements: the ALTA Endorsement 3-06 (Zoning for unimproved land and ALTA

Endorsement 3.1-06 (Zoning – Completed Structure).

Customers sometimes request coverage related to compliance of proposed improvements shown on site and elevation plans (as an overlay on a survey), provided that the improvements are built or constructed according to the plans, but the existing endorsements do not provide such coverage.

The new ALTA Endorsement 3.2-06 (Zoning – Land Under Development) responds to a market need for zoning coverage when the transaction involves contemplated construction.

### **ALTA 9 Series Endorsements**

On Feb. 17, 2011, shortly after the revised ALTA 9 series forms were adopted early in 2011, the U.S. District Court for Eastern District of Pennsylvania rendered a memorandum opinion on the remand of the *Nationwide v. Commonwealth* case from the Third Circuit. It accepted an erroneous interpretation of Section 1(b)(2) of the ALTA 9 and held that: “In short, the Court finds that the ALTA 9 Endorsement provides insurance coverage for any loss arising from any instrument referenced in Schedule B that contains both covenants, conditions, or restrictions, as well as, among other items, an option to purchase, a right of first refusal, or a prior approval of a future purchaser or occupant. The Endorsement does not restrict its coverage to specific provisions within such instruments.”

This erroneous interpretation deviated from prevailing understanding and long standing custom, practice and usage in the title insurance and real estate industry, and it created a risk that was not intended

in the prior development of the ALTA 9 series.

A set of ALTA 9 Series Endorsements were approved in October 2011, but there were a number of comments from ALTA members and customers. The forms were withdrawn for further consideration and revision.

ALTA Endorsements 9-06, 9.1-06, 9.2-06, 9.3-06, 9.6-06, 9.7-06 and 9.8-06 were revised by (i) adding a preamble to reassert the applicability of the policy terms, (ii) revising the insurance provisions to make the references to insured matters singular instead of plural (e.g., a covenant, condition or restriction), (iii) removing the old Section 1(b)(2) from all of the existing endorsements and placing a revised version of it into a new ALTA 9.6-06, and (iv) eliminating the Section 2 coverage for encroachments and minerals from the ALTA 9.1 to 9.3.

#### Revised Forms:

- ALTA Endorsement 9.1-06 (Covenants, Conditions and Restrictions – Unimproved Land – Owner’s Policy)
- ALTA Endorsement 9.2-06 (Covenants, Conditions and Restrictions – Improved Land – Owner’s Policy)
- ALTA Endorsement 9.3-06 (Covenants, Conditions and Restrictions – Loan Policy)

#### New Forms:

- ALTA Endorsement 9-06 (Restrictions, Encroachments, Minerals – Loan Policy)
- ALTA Endorsement 9.6-06 (Private Rights – Loan Policy)
- ALTA Endorsement 9.7-06 (Restrictions, Encroachments, Minerals – Land Under

Development – Loan Policy)

- ALTA Endorsement 9.8-06 (Covenants Conditions and Restrictions – Land Under Development – Owner’s Policy)

#### Withdrawn Forms:

- ALTA Endorsement 9.4-06 (Restrictions, Encroachments, Minerals – Owner’s Policy – Unimproved Land), Revised 2-3-2011 and preceding 9.4-06 versions.
- ALTA Endorsement 9.5-06 (Restrictions, Encroachments, Minerals – Owner’s Policy – Improved Land) Revised 2-3-2011 and preceding 9.5-06 versions.

#### Revised ALTA 13 Series Endorsements

The revision of ALTA Endorsement 13-06 (Leasehold – Owner’s) (Revised) includes minor clarifications, such as a revision of the definition of Personal Property that is consistent with conditions for Severable Improvements in the Energy Endorsements, valuation of the portion of the land from which the insured is evicted and items of loss related to that portion of the land.

The endorsement also includes a new section 4, recognizing, consistent with the prior Leasehold Endorsements that the endorsement does not insure as to remediation resulting from environmental damage or contamination.

The changes to this endorsement are similar to parallel provisions in ALTA Endorsement 36-06 (Energy Project – Leasehold/Easement – Owner’s) and ALTA Endorsement 36.2-06 (Energy Project – Leasehold – Owner’s).

The revision of ALTA Endorsement 13.1-06 (Leasehold

– Loan) includes the same minor clarifications that appear in ALTA Endorsement 13-06. The changes to this endorsement are similar to provisions in ALTA Endorsement 36.1-06 (Energy Project – Leasehold/Easement – Loan) and ALTA Endorsement 36.3-06 (Energy Project – Leasehold – Loan).

These revised endorsements replace the prior ALTA Series 13 Leasehold Endorsements.

#### New ALTA Endorsement 28.1-06 (Encroachments – Boundaries and Easements)

The new Endorsement 28.1-06 (Encroachments – Boundaries and Easements) provides needed coverage with respect to encroachments and is similar to the existing ALTA Endorsement 28-06 (Easement – Damage or Enforced Removal).

“Coverage includes insurance against loss by reason of enforced removal of an improvement encroaching onto adjoining land or encroaching onto an easement,” said Robert Bozarth, underwriting counsel for Fidelity National Title Co. and a member of ALTA’s Forms Committee. “If the underwriter chooses, it may refer in paragraph four to an encroachment for which it will not provide insurance under the endorsement.”

This endorsement can be issued on either commercial or residential property and can be issued with either Loan or Owner’s Policies.

#### New ALTA 35 Series Endorsements

ALTA had not previously adopted separate mineral endorsements, although mineral endorsements are available in the market and are often requested, particularly on commercial



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transactions. The ALTA 9 Series endorsements include mineral and other subsurface substances coverage only in the ALTA Endorsement 9-06 (Restrictions, Encroachments, Minerals – Loan Policy) and ALTA Endorsement 9.7-06 (Restrictions, Encroachments, Minerals – Land Under Development – Loan Policy). The ALTA 36 Series endorsements (Energy Projects) do not include mineral and subsurface substance coverage. Separate mineral endorsements are needed in order to accommodate market demand.

## “The new mineral and subsurface substances endorsements provide flexibility to customers in selection of appropriate coverage.”

“The new mineral and subsurface substances endorsements provide flexibility to customers in selection of appropriate coverage based on the type of improvements that may be covered based on underwriting issues relating to the particular transaction and land,” said Paul Hammann, chief title counsel for First American Title Co. and a member of ALTA’s Forms Committee.

- ALTA Endorsement 35-06 (Minerals and Other Subsurface Substances – Buildings): This endorsement provides indemnity against enforced removal or alteration of buildings located on the Land at Date of Policy because of the exercise of the existing right to use the surface for extraction or development of minerals and other subsurface substances.
- ALTA Endorsement 35.1-06

(Minerals and Other Subsurface Substances – Improvements): This endorsement provides indemnity against enforced removal or alteration of Improvements (as defined) located on the Land at Date of Policy because of the exercise of the existing right to use the surface for extraction or development of minerals and other subsurface substances.

- ALTA Endorsement 35.2-06 (Minerals and Other Subsurface Substances – Described Improvements): This endorsement

provides indemnity against enforced removal or alteration of listed Improvements (shown on the endorsement or in an attachment) located on the Land at Date of Policy because of the exercise of the existing right to use the surface for extraction or development of minerals and other subsurface substances.

- ALTA Endorsement 35.3-06 (Minerals and Other Subsurface Substances – Land Under Development): This endorsement provides indemnity against enforced removal or alteration of Improvements (as defined) located on the Land at Date of Policy and Future Improvements (as defined) located on the Land after Date of Policy because of the exercise of the existing right to use the surface for extraction or development of

minerals and other subsurface substances.

These endorsements may be issued on either commercial or residential property and may be issued with either Loan or Owner’s Policies.

### New ALTA 36 Series Endorsements

Energy projects, including those designed to harvest wind and solar for energy, have accounted for a significant percentage of volume and gross revenue for the title insurance industry for a number of years. As the United States seeks to reduce its reliance on foreign energy sources, volume of energy projects, including those designed to harvest wind and solar for energy, will only continue to grow.

“This market segment, perhaps more than any other, seeks to tailor title insurance coverage to fit its needs through endorsements and, in the absence of acceptable endorsements, by adding coverage in the policy Schedules,” said Chuck Hoyum, chief underwriting counsel for Old Republic National Title Insurance Co. and member of the Forms Committee. “This new series of ALTA Endorsements will assist our industry in responding to this market segment’s perceived coverage needs with the beneficial consistency achieved whenever ALTA adopts forms for use nationwide.”

Here’s a look at the ALTA 36 Series Endorsements:

- ALTA Endorsement 36-06 (Energy Project – Leasehold/Easement – Owner’s): This endorsement is patterned after the ALTA Endorsement 13-06 (Leasehold – Owner’s). This form (1) adds some energy project-specific definitions, (2) includes coverage for insured

## Upcoming Work

The Forms Committee continuously works to keep title insurance coverage responsive to the needs of insureds and the industry. The committee is currently engaged in revising all of the basic ALTA policy forms.

easement interests (as well as for insured leasehold estates) that are often utilized in lieu of or along with leases to create the rights in the land for some or all of the project improvements (as well as other more traditional easement purposes), (3) expands the “Valuation of Title” section to make clear that the computation of loss or damage for a covered defect affecting one parcel (or fewer than all parcels) shall include resulting loss or damage to the “integrated project,” (4) builds in coverage pertaining to “Severable Improvements” (as defined) that is also available through the ALTA Endorsement 31-06 (“Severable Improvements”), (5) tailors the “Additional Items of Loss” section as appropriate to the energy project context and (6) adds a new exclusion addressing costs of remediation resulting from environmental damage or contamination.

- ALTA Endorsement 36.1-06 (Energy Project – Leasehold/ Easement – Loan): This form is the Loan Policy counterpart to the ALTA Endorsement 36-06 summary.
- ALTA Endorsement 36.2-06 (Energy Project – Leasehold – Owner’s): This endorsement deletes the aspects of the ALTA

Endorsement 36-06 addressing insured easement interests for those transactions in which there are no easement interests being insured (but that do involve insured leasehold estates). In every other respect, it is identical to the ALTA Endorsement 36-06 summary.

- ALTA Endorsement 36.3-06 (Energy Project – Leasehold – Loan): This form is the Loan Policy counterpart to the ALTA Endorsement 36.2-06 summary.
- ALTA Endorsement 36.4-06 (Energy Project – Covenants, Conditions and Restrictions – Land Under Development – Owner’s): This endorsement is patterned after the ALTA Endorsement 9.8-06, with tailoring appropriate to the energy project context, to provide coverage as to Covenants including for violations or enforced removal of any “Electricity Facility” or “Severable Improvement,” the definitions of which terms include those existing at Date of Policy and those affixed later in the locations identified on the set of defined Plans, as more particularly expressed in the endorsement.
- ALTA Endorsement 36.5-06 (Energy Project – Covenants, Conditions and Restrictions – Land Under Development – Loan): This endorsement is patterned after the ALTA Endorsement 9.7-06. This form is the Loan Policy counterpart to the ALTA Endorsement 36.4-06 summary.
- ALTA Endorsement 36.6-06 (Energy Project – Encroachments): This endorsement provides coverage as to Encroachments including the existence, unless identified in an exception in Schedule B, or enforced removal of any encroaching “Electricity Facility” or “Severable

Improvement,” the definitions of which include those existing at Date of Policy and those affixed later in the locations identified on the set of defined Plans. This form can be issued with either an Owner’s Policy or a Loan Policy.

### Revised ALTA U.S. Policy Form

The ALTA Forms Committee occasionally reviews existing forms in order to update coverage, clarify provisions where necessary and eliminate unnecessary inconsistencies. Upon reviewing the U.S. Policy Form, the committee discovered that, unlike most ALTA policies, including the Owner’s Policy, Loan Policy, Homeowner’s Policy, and Expanded Coverage Residential Loan Policy, this form did not include a creditors’ rights exclusion.

The revised U.S. Policy added a creditors’ rights exclusion as Exclusion 5. This exclusion is like the creditors’ rights exclusion added to other ALTA policies since 1992 and relates to the vesting transaction. No other change has been made to the U.S. Policy Form. This policy will replace the existing U.S. Policy (9-29-91).

The comment period for the U.S. Policy has been extended an additional month to allow time for the Department of Justice to review and comment. This will allow the DOJ time to complete changes to its regulations, which will permit the new U.S. Policy to be accepted across the country.



**Jim Gosdin** is chief underwriting counsel for Stewart Title Guaranty Co. and chair of ALTA’s Forms Committee. He can be

reached at [jgosdin@stewart.com](mailto:jgosdin@stewart.com).



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# Benefits of MERS – A Personal Viewpoint

Despite the many legal challenges around the country, the title insurance industry has derived many benefits from MERS.

BY MARJORIE BARDWELL

Late last year, I was asked to participate in a panel at the meeting of the Property Records Industry Association (PRIA). The attendees at the meeting were various recorders and registrars from across the county. The topic of discussion was on the Mortgage Electronic Registration Systems (MERS).

The other panel members were Bill Beckmann, CEO of MERS; Jeff Thigpen, register of deeds, Guilford County (NC); and a representative from the lending industry. I was representing the title industry, and I hope that I did a good job for all of you. A day or two before the meeting got started in San Antonio, Dallas County (TX) filed a lawsuit against MERS seeking the alleged loss of recording fees due to substitution of the off-record MERS for the public

records when it came to “assignments of mortgages.” It was a little tense as the presentation began.

Just last month, Thigpen sued Bank of America Corp., J.P. Morgan Chase & Co., Wells Fargo & Co. Citigroup

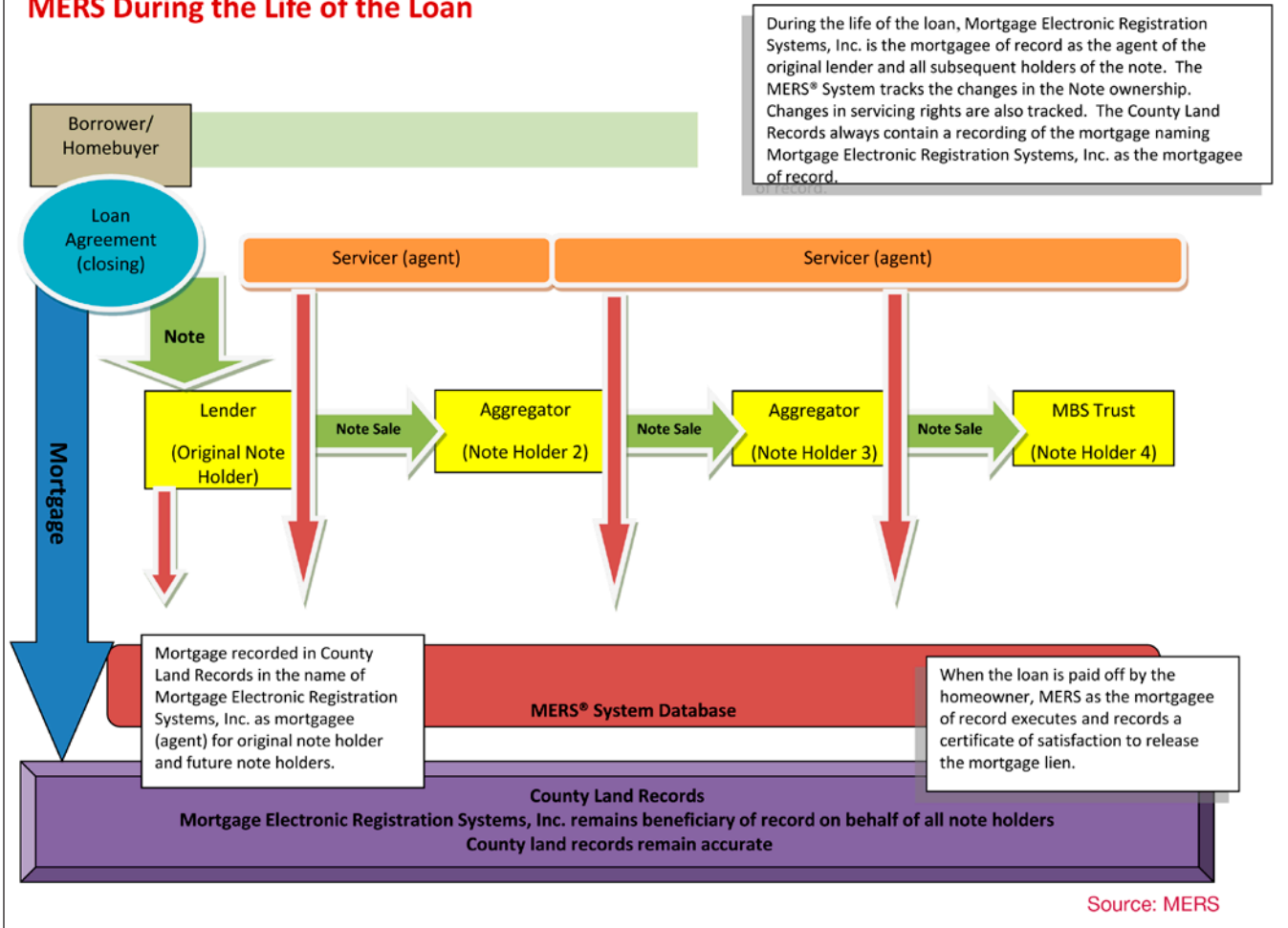
Inc., Lender Processing Services and MERS Corp., which owns MERS, alleging mortgage documents were signed without proper review.

Beckmann presented first and talked about some of the issues that may have interfered with a healthy relationship with local recorders and registers, some of the misconceptions about the function of MERS, especially the role of MERS in the foreclosure process, and some of the litigation that has been going on. The tension was now palpable in the room.

Then I got to speak. I explained that I was old enough, as a title professional, to remember life before MERS. I tried to present, from my point of view, some possible reasons for the underlying inconsistencies across the states in the treatment of the effect of MERS on both the title and the foreclosure process.



### MERS During the Life of the Loan



I personally think that there are some inherent issues always present with the litigation of real property concepts that come to the forefront when courts struggle with how to treat MERS litigation. I think some of these factors are at play:

- Real property law is in itself somewhat arcane. Some of the concepts we deal with everyday as title people haven't really changed much since English common law. Many foreclosure processes are over 100 years old and pretty well set. The cases that refined and defined the process are well aged. None of them contemplated the securitization process.
- Not very many attorneys that are experts in the area of real estate law go on to become members of our judiciary. Many of our judges come out of the criminal practice area, such as prosecutors or defense litigators. Many are civil litigators. Not too many were full-time real estate practitioners.
- The concept of MERS also incorporates the functions and provisions of personal property law and the Uniform Commercial Code (UCC). That is also a very specialized area of the law, and I would venture to say the majority of practicing attorneys haven't had to consider the UCC since they studied it in law school. I didn't until I had to analyze some of the servicing contracts that we have been presented with to determine who has the authority to do what in relation to some of the financing documentation we may review as we underwrite for title insurance. This area of the law is so narrow and complex that the Permanent Editorial Board for the Uniform Commercial Code published a white paper on the "Application of the Uniform Commercial Code to Selected Issues Relating to Mortgage Notes" this past November to try to offer guidance

## Federal, State Courts Across the Country Rule in Favor of MERS

Over the past several months, state and federal courts in Nevada, Washington, Oregon, Idaho, New Hampshire and Hawaii have rejected challenges to the validity of the Mortgage Electronic Registration Systems, Inc.'s (MERS) role in assigning interests in mortgages or deeds of trust.

In the latest decision, United States District Court Judge in the Western District of Washington dismissed with prejudice all claims in *Myers v. Mortgage Electronic Registration Systems Inc.*, which alleged MERS violated of the State of Washington's Deed of Trust Act (WDTA). U.S. District Court Judge Ronald B. Leighton found no merit to the claim that MERS' involvement tainted the foreclosure process or that the defendants violated the WDTA and added that other "Courts routinely reject these claims."

"The Myers decision adds to a legion of similar federal and state rulings across the country finding these challenges to MERS' role meritless," said Janis L. Smith, MERSCORP Holdings vice president of corporate communications. "We are confident that as MERS and the role it plays becomes more understood, people will see that it adds great value to our nation's system of housing finance and provides community and homeowner benefits too."

Two United States District Court Judges in the District of Hawaii also dismissed challenges to the validity of MERS. In *Caraang v. Aurora Loan Services*, the court rejected a challenge to the validity of a MERS mortgage assignment and found no merit to plaintiffs' claims that the assignment was fraudulent. Specifically, the Court ruled that the plaintiffs lacked standing to object as non-parties to the MERS-to-Aurora Loan Services mortgage assignment. In *Federal National Mortgage Association v. Kamakau*, United States District Court Judge J. Michael Seabright dismissed the borrower's complaint, which alleged that MERS and other defendants breached the mortgage contract by invalidly assigning their interests and securitizing the mortgage.

Meanwhile, the U.S. Court for the Western District of Kentucky, Paducah Division, dismissed a recording fee suit against MERS. In an opinion written by Chief Judge Joseph H. McKinley, Jr., the court said, "the persons intended to be protected by Kentucky's land recording system consists of existing lienholders seeking to give notice of their secured status, prospective purchasers and creditors seeking information about prior liens, and owners of property seeking release of liens once debts are paid off."

In *Volkes v. BAC Home Loans Servicing* and *U.S. Bank v. Davis*, the Nevada Supreme Court affirmed the orders of District Judge Patrick Flanagan who had granted foreclosure certificates after rejecting challenges to MERS-generated assignments. Citing previous rulings across the country, the court noted that: "Several have even confirmed MERS' legitimacy with respect to the precise issue presented here: whether MERS, acting as a lender's nominee, can assign the lender's ownership of a note to another entity."

to all parties, including the courts, who are struggling with these concepts. I urge you read it if you are interested in the legal basis upon which MERS functions.

- I think our current economic climate is the perfect storm for these factors to contribute to a misunderstanding of the responsibilities for the foreclosure problems that face us on all fronts. Everyone is angry with what has happened in the real estate and foreclosure markets and the economy in general. Everyone wants to place blame somewhere. MERS is convenient since it appears so often in the residential mortgage transaction. It is perhaps the least understood player generally (maybe even less so than title insurance), and therefore an easy target.

I mentioned to the attendees that I have been told that in some areas of the county, 80 percent or more of the foreclosure actions concern property that has been vacated. The borrowers are long gone. The real victims are the neighborhoods that are deteriorating as people fight over issues that don't help those remaining.

I'm not talking about borrowers who were injured by lender practices. They need their day in court. I'm talking about the REO that remains empty as courts, in an attempt to help an individual homeowner, reconsider and rewrite the foreclosure statutes and perhaps, on occasion, create more harm than prevent injustice.

I explained that as a title insurer, I really don't have a "dog in this fight." We do not insure MERS as a sole insured on a loan policy insuring a mortgage or deed of trust that reflects MERS as the nominee of the originating lender, so we have

not been party to the type of legal challenges to MERS that we have seen around the country. I am old enough to remember life before MERS. I, for one, am happier as a title examiner now than I was before. I thank MERS for:

- Eliminating the chaos of having assignments recorded out of order, if at all. In the early days of government backed mortgages, the other players were usually HUD or Fannie or Freddie. When you found a “wild” assignment it was difficult to deal with those vast entities to get corrective instruments to substantiate the satisfaction or deed of reconveyance you were given or found in the records.
- Helping eliminate the problems in the chain of title for the mortgage or deed of trust. The record we deal with every day is much cleaner and, more importantly, more reliable. The chain of ownership was a huge challenge before MERS.
- Helping to facilitate getting payoff and servicer information. In the “old” days, the servicers (which were a rather new concept) came and went without any information in our local records. I remember keeping a manual list of loan originators, brokers, etc. and who they were known as now. Always with a hope that we had found them all.
- Getting the deals closed more smoothly, since the time we spent before trying to identify who the proper party was to request a payoff from is now simply a phone call or computer click away.

- Most importantly, giving closers comfort in knowing that they are dealing with the correct entity and can rely on the payoff figures they receive. I do not know of any litigation involving a challenge to a payoff issued from a servicer identified by MERS.

The rest of the discussion was quite lively with the panel proceeding to hear from the lender representative (who basically said MERS made life easier, faster and cheaper and therefore was a good thing for them) and ended with a presentation by a register of deeds, who had a very different point of view about the use

“I thank MERS for giving closers comfort in knowing that they are dealing with the correct entity and can rely on the payoff figures they receive.”

of MERS. The issue on lost recording revenue was foremost in that discussion, although there are many states (usually the judicial foreclosure states) where there is no requirement that an assignment be recorded at all. The party who shows up waving the note usually can foreclose, regardless of what the record says.

I explained that our policies are written to reflect this common law concept. We do not just insure the record holder of the mortgage. We define the insured on a loan policy as the “owner of the indebtedness.” They have to prove that they are such under state law in order to be

recognized as covered, but that may not require them to prove they hold the interest of record.

The questions that followed the presentations just showed how much further the public (and in this case public officials) need to be helped to understand the role MERS plays or more often doesn’t play in the foreclosure fiasco we are facing across the nation.

I think that as title professionals we need to understand that role in relation to our own and be able to clarify how that affects our role in a transaction, as insurer, closer, escrowee or settlement agent. And we

need to be able to explain that role in order to keep the discussion moving forward.

I would direct any of you who would like more information on what is happening across the country with challenges to MERS to go to their website ([www.mersinc.org](http://www.mersinc.org)), which contains a listing of all cases involving MERS and the outcome of each.



**Marjorie Bardwell** is director-underwriting services for Fidelity National Title Group. She also is chair of ALTA’s Title Counsel. She can be reached at [marjorie.bardwell@fnf.com](mailto:marjorie.bardwell@fnf.com).



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# Federal Conference Preview: Help ALTA Influence Change

Members of Congress make decisions in D.C. that impact your industry, your customers and your business. That's why it's vital for the title insurance industry to speak with one voice about the role we play in the real estate process.

**B**ecause the Ohio Land Title Association sends its president and president elect to ALTA's Federal Conference and Lobby Day, Scott Stevenson attended his first Lobby Day five years ago.

The experience in D.C. changed his entire impression of the industry and what it means to visit with elected officials.

"I had no idea that one 'title guy' from Ohio could really change impressions of our industry with our state's congressional delegates during a 15-minute meeting," said Stevenson, who is president of Northwest Title. "My view of our industry and my place within it changed because of this event. It had that much of an impact on me and my view of the political process."

Now, Stevenson will attend his sixth Federal Conference, which will be held May 6-9 at the Hyatt

Regency Capitol Hill in D.C. Prior to attending the 2007 conference, Stevenson only focused on what directly impacted his business on a daily basis.

"I had never really spent time looking ahead toward the national level for what changes in Washington would affect our agency," he said. "When change came, we simply reacted to it. The Fed Conference provides me with so much information about what my agency, our industry and each state will face in the coming years. I see this event as required learning for me and my operation."

Last year, ALTA members held nearly 200 meetings with members of Congress and staff, offering input on how to reform Fannie Mae and Freddie Mac, RESPA Reform and the Dodd-Frank Act. Among some of the notable members of Congress attendees visited were U.S. Sens. Tim

Johnson (R-IL) and Richard Shelby (D-AL), and U.S. Reps. Allyson Schwartz (D-PA), Ed Royce (R-CA), Judy Biggert (R-IL), Gary Miller (R-CA) and Spencer Bachus (R-AL).

ALTA staff schedules these important face-to-face visits and provides an easy-to-understand policy briefing on how to conduct successful visits with Congressional representatives during the Lobby Day. During the briefing, attendees learn what issues to focus on and what talking points to utilize in the meetings. To make the experience as efficient as possible, presentation materials also are distributed for the Hill visits.

"I used to be nervous that I didn't know all the issues that face our industry and therefore wouldn't be able to engage in a discussion with a congressional delegate," Stevenson said. "If you have these same thoughts, rest assured that the entire conference prepares you for Lobby Day. There's no need to be nervous – just be yourself."

Cynthia Durham Bair of the South Carolina-based law firm Rogers Townsend & Thomas said briefings are well organized and prepare her to effectively communicate the industry's message during her Congressional meetings. Amazed that in South Carolina so few title agents, mostly attorneys, are involved in the state or national association, Blair encourages more title insurance professionals to get involved.

“Most don’t seem to realize the urgent need for us all to be involved politically, to either facilitate change or at least impact decisions that are made regarding our industry,” said Blair, who is attending her third Federal Conference. There are threats to our business and our livelihood every day. It is my belief that the only way to be aware and prepared is to be involved.”

Debbie Scott of Omaha National Title & Escrow Company will attend the Federal Conference for the fourth time. She lauded ALTA’s government affairs team for their efforts on behalf of the industry, “but they need our help.”

by Congress and other federal regulatory bodies, Richard Hogan understands the importance of the industry speaking with one voice so rule makers understand the important role the industry plays in the real estate process.

“The best way to accomplish this is to attend the ALTA Federal Conference, said Hogan, legislative and regulatory counsel for CATIC. “Title agents in particular need to attend this conference because lawmakers need to know the important job they perform every day.”

While ALTA believes a GSE reform bill will not move this

rules by July 21, it is imperative stakeholders hear from ALTA members on how these forms will impact closings and consumers.

Scott recently attended a couple of town hall meetings, one of which was conducted by U.S. Sen. Mike Johanns (R-NE) and discussed the CFPB.

“When queried about the CFPB, he said that in five years, the Bureau will be like the EPA on steroids,” Scott said. “I believe it’s our responsibility to educate our representatives about the impact regulations have not just on our businesses, but ultimately on the consumer.”

In addition to the Lobby Day, there are meetings for ALTA members and state leaders to share successes and struggles each are contending with.

“We are all dealing with the same issues and it is amazing what happens in these meetings when we start to share and discuss solutions to problems,” Stevenson said.

Beside the Lobby Day meetings on the Hill, ALTA also schedules additional sessions and receptions to network with members of Congress. Last year, Reps. Royce and Ed Perlmutter (D-CO) and Sen. Ben Nelson (D-NE) each addressed attendees and fielded questions.

“Lobby Day is always exciting,” Stevenson said. “You go from one meeting to the next, explaining the issues facing our industry and talking about what it is like on the ground in your state. It is a long day, but it is so empowering. When it’s over, you know you did something special – something that will impact everyone in our industry. I hope more agents join us this year in Washington. If you ever wanted to feel engaged in our industry – this event is for you, and I hope you join us in May.”

**To register and share the industry’s message, go to:**  
[www.alta.org/meetings/federal](http://www.alta.org/meetings/federal)

“Our congressmen and women in Washington may, or may not, be well intended, but whatever the case, they seem to have a propensity for passing legislation fraught with unintended consequences. Enter Dodd-Frank and the CFPB to illustrate,” she said.

This is where participation in the Lobby Day makes a difference. The title industry is facing a sharp increase in new federal laws and regulations that are being proposed by congress and federal regulatory bodies. It is imperative that the title industry speak with one voice to these rule makers so that our views are listened to.

Because of the myriad new federal laws and regulations being proposed

Congress, this will remain a discussion priority during the conference because the industry must continue to promote the idea that title insurance is an important standard for underwriting collateral that should be maintained. Other issues that will garner attention are two rules that could dramatically alter the mortgage market: the ability to repay rule (Qualified Mortgage) and risk retention (Qualified Residential Mortgage) rule. The Consumer Financial Protection Bureau’s efforts to create new combined mortgage disclosure forms to replace the current GFE and HUD-1 are also high on the agenda. With the CFPB to publish the forms and proposed





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# Cost of Constructing New Single-Family Home Holds Steady

While the average price of a single family home has dropped over the past several years, the share of that price that goes to construction cost and finished lot cost has not changed significantly.

The average price of a new single-family home in the National Association of Home Builders (NAHB) 2011 survey was \$310,619, down from \$377,624 in 2009. In 2011, the cost of construction accounted for nearly 60 percent of the final sales price of an average home, while the cost of the finished lot accounted for 22 percent. This was similar to results from NAHB's last survey in 2009.

Although the share of the price going towards the cost of

construction has remained stable over the last two years, the actual cost of constructing a new single-family home in 2011 is significantly less than in 2009.

The average construction cost of homes in the new survey is \$184,125, while the 2009 cost was \$221,511. This is likely a result of the smaller square footage of homes built in 2011.

The average finished area of a single-family home declined from

2,716 square feet in 2009 to 2,311 square feet in 2011.

When we divide the average cost by the average square footage, we see that the cost per square foot of constructing a home among surveyed NAHB members has remained around \$80 per square foot for both 2009 and 2011.

In addition to declines in the size of a home, profit accounted for an all-time low of just 6.8 percent of the final sales price in 2011. This is down from 8.9 percent in 2009.

Survey participants also were asked to further breakdown the cost of constructing a new single-family home.

As usual, framing and trusses accounted for the largest share of construction cost in 2011 homes (13.5%). This was followed by excavation, foundation and backfill (9.3%), plumbing (6%) and cabinets and countertops (5.6%). HVAC, siding, tiles and carpet, electrical wiring, and drywall each accounted for between 4% and 5% of total construction costs.

**Table 2. SINGLE-FAMILY HOMES SALES PRICE BREAKDOWN HISTORY**

Sale Price Breakdown	1995	1998	2002	2004	2007	2009	2011
1. Finished Lot Cost	24.4%	23.6%	23.5%	26.0%	24.5%	20.3%	21.7%
2. Total Construction Cost	53.3%	54.8%	50.8%	51.7%	48.1%	58.9%	59.3%
3. Financing Cost	2.0%	1.9%	2.1%	1.8%	2.4%	1.7%	2.1%
4. Overhead and General Expenses	5.8%	5.7%	5.5%	5.8%	7.0%	5.4%	5.2%
5. Marketing Cost	2.2%	1.4%	2.4%	1.9%	2.5%	1.4%	1.5%
6. Sales Commission	3.3%	3.4%	3.7%	3.0%	4.3%	3.4%	3.3%
7. Profit	9.1%	9.2%	12.0%	9.8%	11.2%	8.9%	6.8%
<b>8. Total Sales Price (\$)</b>	<b>183,585</b>	<b>226,680</b>	<b>298,412</b>	<b>373,349</b>	<b>454,906</b>	<b>377,624</b>	<b>310,619</b>

Source: NAHB Construction Cost Surveys, 1995-2011

# Where Are Buyers Moving?

Homebuyers are on the prowl for bargains, according to a survey by Trulia

**D**espite having more employment opportunities, the higher cost of housing in big cities has made homes in nearby suburbs and neighboring smaller metros much more attractive to today's homebuyers and renters, according to a study by Trulia.

The Metro Movers Report, a forward-looking housing study that provides the inside scoop on where homebuyers are looking to move tomorrow, shows that 59 percent of house hunters are looking to move outside of their current metro area. In fact, most of these cross-metro searches are between neighboring metros such as the top search from Los Angeles to Riverside.

"Homebuyers, sellers, real estate professionals and builders need to know which local markets will heat up and which will cool off," said Jed Kolko, Trulia's chief economist. "Search behavior tells us where people want to move and can point to which markets will grow, long before official population data tells us what happened. This is a crucial signal for anyone with a stake in the housing market."

Of the cross-metro searches, 56 percent are for properties in metros with larger price declines during the housing bust and 63 percent are for properties in lower-density, more sprawling areas.

In major metros like Florida and Inland California – where prices have fallen by half or more – there are twice as many "inbound" home searches by outsiders than "outbound" searches by locals.

Nearly all the top longer-distance home searches from New York and Chicago at the end of the summer were to major metros in the South and Southwest – but not always to the same ones.

New Yorkers preferred homes along the Atlantic coast of Florida, including Miami, West Palm Beach and Fort Lauderdale. Meanwhile, Chicagoans preferred Florida Gulf Coast spots in Tampa and Cape Coral as well as metro areas in Texas, Arizona and Nevada.

The majority of these homebuyers are going online to find potential homes. Almost 90 percent of homebuyers used the Internet in their house searches in 2011, according to the National Association of Realtors.

## Existing Home Sales

Year		U.S.					U.S.					Mos.	
		U.S.	Northeast	Midwest	South	West	U.S.	Northeast	Midwest	South	West	Inventory*	Supply
2009		4,340,000	590,000	980,000	1,640,000	1,130,000	*	*	*	*	*	2,740,000	8.8
2010		4,190,000	570,000	910,000	1,630,000	1,080,000	*	*	*	*	*	3,020,000	9.4
2011		4,260,000	540,000	910,000	1,680,000	1,130,000	*	*	*	*	*	2,320,000	8.2
		Seasonally Adjusted Annual Rate					Not Seasonally Adjusted						
2011	Feb	4,220,000	550,000	900,000	1,620,000	1,150,000	253,000	34,000	54,000	99,000	66,000	3,010,000	8.6
2011	Mar	4,260,000	550,000	880,000	1,690,000	1,140,000	347,000	41,000	72,000	138,000	96,000	3,030,000	8.5
2011	Apr	4,200,000	520,000	900,000	1,680,000	1,100,000	375,000	45,000	79,000	148,000	103,000	3,200,000	9.1
2011	May	4,150,000	550,000	870,000	1,630,000	1,100,000	391,000	48,000	89,000	150,000	104,000	3,130,000	9.1
2011	Jun	4,180,000	530,000	890,000	1,640,000	1,120,000	440,000	54,000	97,000	171,000	118,000	3,160,000	9.1
2011	Jul	4,050,000	510,000	890,000	1,630,000	1,020,000	385,000	57,000	88,000	151,000	89,000	3,150,000	9.3
2011	Aug	4,410,000	580,000	950,000	1,710,000	1,170,000	429,000	57,000	92,000	170,000	110,000	3,020,000	8.2
2011	Sep	4,280,000	550,000	920,000	1,690,000	1,120,000	369,000	47,000	82,000	149,000	91,000	2,900,000	8.1
2011	Oct	4,320,000	510,000	940,000	1,730,000	1,140,000	343,000	43,000	71,000	140,000	89,000	2,740,000	7.6
2011	Nov	4,400,000	540,000	980,000	1,740,000	1,140,000	335,000	40,000	68,000	132,000	95,000	2,620,000	7.1
2011	Dec	4,380,000	580,000	970,000	1,700,000	1,130,000	349,000	44,000	76,000	136,000	93,000	2,320,000	6.4
2012	Jan r	4,630,000	600,000	1,010,000	1,760,000	1,260,000	260,000	30,000	53,000	101,000	76,000	2,330,000	6.0
2012	Feb p	4,590,000	580,000	1,020,000	1,770,000	1,220,000	286,000	37,000	64,000	112,000	73,000	2,430,000	6.4
	vs. last month:	-0.9%	-3.3%	1.0%	0.6%	-3.2%	10.0%	23.3%	20.8%	10.9%	-3.9%	4.3%	6.7%
	vs. last year:	8.8%	5.5%	13.3%	9.3%	6.1%	13.0%	8.8%	18.5%	13.1%	10.6%	-19.3%	-25.6%
	year-to-date:						0.546	0.067	0.117	0.213	0.149		

Note: Annual inventory figures are from December of each year

Source: National Association of Realtors

# DATA TRACE

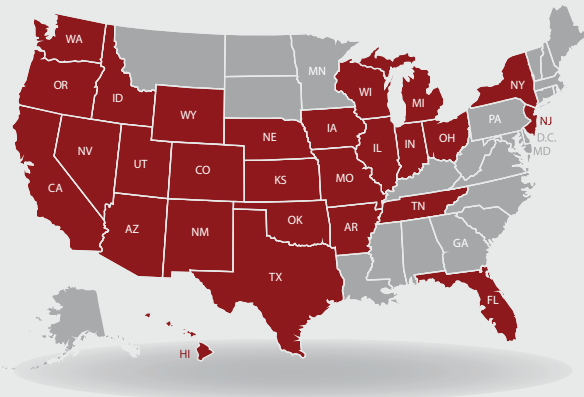
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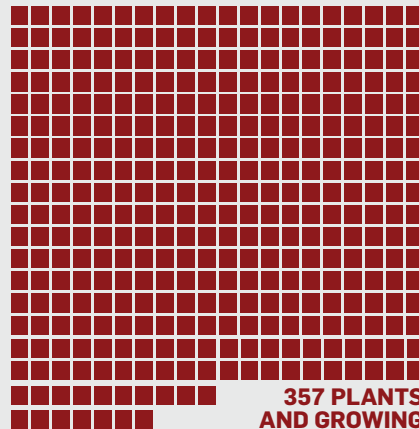
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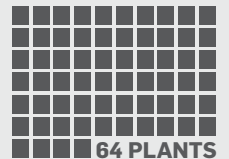
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## Fidelity's Title Division Reports Q4 and Full-Year Earnings

Fidelity National Financial's title group posted pre-tax earnings of \$142.2 million during the fourth quarter of 2011, down from \$201.1 million

during the same period in 2010. For all of 2011, the title division reported \$530.3 million in pre-tax earnings, up from \$506.4 million in 2010.

"The fourth quarter was a strong finish to a great year in our title business, as our emphasis on profitability is reflected in these results," said George Scanlon, FNF chief executive officer. "Overall, we are confident that our title business is well-positioned to produce strong, industry-leading returns in 2012."

Scanlon said Fidelity's agency business improved during the fourth quarter as it continued to eliminate unprofitable agency relationships and moved to an 80/20 percent premium split in



New York. The company reported \$873 million in premiums during the fourth quarter of 2011, down from \$1.08 billion during Q4 2010.

For the year, FNF generated \$3.26 billion in premiums compared to \$3.6 billion in 2010.

FNF reported total title claims paid in the fourth quarter declined by 14 percent versus the fourth quarter of 2010, falling from \$177 million in the fourth quarter of 2010 to \$153 million in fourth-quarter 2011.

For the year, Fidelity paid \$520.4 million in claims, compared to \$526 million in 2010. The company expects the downward trend to continue into next year.

## First American Posts Strong Fourth Quarter

Commercial and refinance activity helped First American Financial's title insurance and services segment post pretax income of \$71.4 million in the fourth quarter of 2011, as the company generated \$158.6 million in pretax income for the entire year.

"We are pleased with our company's performance in the fourth quarter," said Dennis Gilmore, chief executive officer at First American Financial Corporation. "Our efficiency initiatives, coupled with increased commercial and refinance activity, enabled us to deliver our strongest title

segment margins of the year."

During the fourth quarter, First American direct operations opened 320,100 orders, while closing 249,700 orders. The provision for policy losses and other claims was \$64.5 million in the fourth quarter, or 8.6 percent of title premiums and escrow fees, up \$21.9 million compared with the same quarter of the prior year. The fourth-quarter and year-end 2011 results include a \$19.2 million charge related to the settlement of the Bank of America lawsuit.



*First American*

## Stewart Streamlines Title Ordering Process with Calyx Software

Stewart Title has integrated its online ordering platform, Orders Gateway, into Calyx Point, a mortgage origination provider. The integration of the two systems enables Calyx Point users to place and track orders with Stewart Title from within

Calyx Point, simplifying the ordering process and enhancing the customer experience. Orders Gateway offers 24/7 availability, eliminates the need to re-enter information and provides a convenient office selection.

### Underwriter Sues Law Firm, Title Agency for Missing Escrow Funds

First American Title Insurance Co. filed a lawsuit against a Georgia law firm and its title company alleging the misappropriation of escrow funds has exposed the company to more than \$1 million in claims from sellers, lenders and others who didn't receive payoffs after closings handled by the firm.

Named in the lawsuit are the Law Office of Michael A. Eddings, Apex Title Inc., Michael Eddings, Sonya Eddings, Columbus Bank & Trust Co. and other entities owned by the Eddings.

Both the law firm and Apex Title have agency agreements with First American for issuing title insurance policies. As parties to the agreement, the law firm and Apex Title had a duty to keep escrow accounts separate from operating accounts, disburse funds for appropriate purposes and reconcile bank statements.

According to the lawsuit filed in U.S. District Court Georgia Middle District, First American was informed in October 2011 that the law firm and Apex Title failed to disburse hundreds of thousands of dollars intended for loan payoffs and/or seller

proceeds from multiple closings. During an audit of the companies' records, First American found diversion of escrow funds, as well as alteration of banking records and wire transmittal documentation. During the investigation, the lawsuit contends Sonya Eddings admitted that since at least 2007, she diverted funds out of the escrow account to the operating account to pay debts and expenses of other companies operated by the Eddings. According to the lawsuit and Sonya Eddings' admission, the defendants failed to properly disburse more than \$2 million in funds.

In a handwritten note sent in October 2011, Sonya Eddings told First American's auditors she failed to disburse several payoffs after real estate closings and began transferring "small amounts" from the firm's escrow account in 2007 to cover the expenses of another business. "No one at the Law Office of Michael A. Eddings was aware of my actions," she said in a handwritten statement dated Oct. 27. "I completely violated the trust of this law firm."

Because of the continued improper transfer of escrow funds, the account

had a negative balance on numerous occasions. First American alleges the law firm's bank, CB&T, was aware of the depletion of funds. First American said CB&T had a "duty to monitor the IOLTA escrow account activities" of Apex Title and the law firm for negative balances and other suspicious activity.

"Yet, upon information and belief, continued to permit the improper use of escrow funds," First American said in the lawsuit. "CB&T was on notice

of the Eddings' mishandling and misappropriation of escrow account funds, but continued to accept payments using the escrow funds for its own benefit and permitted the Eddings' ongoing scheme to defraud parties to the various transactions and First American."



### Regional Underwriters Merge

Ohio-based General Title Insurance Co. has merged with Manito Title Insurance Co. According to an announcement by General Title President Robert Holman, Pennsylvania-based Manito Title will operate under the General Title brand.

"We are excited about our opportunities in Pennsylvania as they present us with a chance to combine our unique suite of services with the best independent title insurance agencies across the state who are looking for the support, accessibility and the freedom from direct

competition that General Title provides," Holman said.

General Title, which has been in business since 1925 and also is licensed in Indiana and Kentucky, reported \$7.2 million in premiums in 2010, while reporting \$4.9 million through the third quarter of 2011.

Manito Title, which was opened in 1970 by Robert West, is a family owned business managed by Manito Abstract Company. In 2010, Manito Title generated \$624,663 in premiums and \$217,804 in premiums through third quarter of 2011.

## Stewart Reports First Full-Year Profit Since 2006

Stewart Information Services reported its third consecutive quarter of profitability and its first annual profit since 2006, according to the company's fourth-quarter and full-year 2011 financial results.

For the year, the company reported net earnings of \$2.3 million, a \$14.9 million improvement from a net loss of \$12.6 million for 2010. Net earnings for the fourth quarter of 2011 were \$2.2 million, compared with \$10 million in the fourth quarter 2010.

"Over the past several years, Stewart has persevered through significant economic headwinds. Rather than waiting for a market recovery, we have taken the opportunity to revamp our operations for future success," said Matthew Morris, who was named the company's chief executive officer in November. "Steps taken to reduce our risk profile, align and focus our sales and operations around customer segments and enhance productivity will not only allow

us to generate positive returns in current market conditions, but will yield tremendous margin benefit within a market recovery."

In 2011, Stewart reported it continued to improve the quality of its network of independent agencies, achieving an increase in the average revenue per agency while lowering the overall number of agencies as well as reducing risk of future title losses. Stewart's direct operations opened 90,700 orders during the fourth quarter of 2011, while closing 73,200 orders. Claims expense in the fourth quarter of 2011 included charges of \$6.9 million attributable to reserves for large claims relating primarily to prior policy years. Fourth-quarter 2010 included charges of \$5.1 million predominantly to a reserve-strengthening charge for prior policy years. For 2011, title loss provisions on large claims relating primarily to prior policy years, including defalcations, totaled \$22.2 million.

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## Wife of Former Oklahoma Land Title Association President Passes Away

Vera Harper, the wife of Earl Harper, passed away Feb. 12 at the age of 86.

Vera and Earl purchased Southern Abstract Company in 1957. They operated the company until Earl's death several years ago. The couple's son, Owen Harper, still operates the company.

The couple attended many ALTA conventions for more than 20 years. Earl was chairman of ALTA's Errors and Omissions Committee. He served as president of the Oklahoma Land Title Association in 1970-71.

Herschel Beard, owner of Marshall County Abstract Co. in Oklahoma and a member of ALTA's Board of Governors, recalled Vera and Earl as mentors to the younger title professionals.

"She was always happy, cheerful and anxious to hug her friends," Beard said. "Some in our industry will remember that Earl Harper was one of the guiding forces in getting TIAC organized, which provided a much-needed resource for errors and omissions insurance for our industry as part of the membership value of ALTA. Certainly, Vera's support in that effort was instrumental in its creation."

Declining health prevented her from attending OLTA events the past year, but Beard said she always sent messages to her industry friends.

"We will miss Vera, but will always remember with fondness the legacy that she leaves, and the wonderful contribution she made to our Oklahoma association, and to our industry nationwide," Beard said.

Vera and Earl were both mentors to Mark Bilbrey, who served as ALTA president in 2004-2005 and has worked in the industry for nearly 40 years.

"Vera loved the title industry and especially the friendships she developed through ALTA," Bilbrey said. "Vera was always the one that went out of her way to make you feel welcome. She was one of the first true ambassadors of ALTA with her wonderful smile and warm hug. She welcomed my wife, Cathy, and me when we were title rookies, and shared her knowledge and guidance that led us to our ALTA involvement and commitment. She was a kind person and will be missed by all that had the privilege to call her friend."

### D. Bello Associates Announces Promotion

D. Bello Associates, a provider of customized outsourcing solutions for the title insurance industry, announced the promotion of Jeffrey Bates to executive vice president and chief operating officer. Previously serving as vice president and project leader of the company, Bates is now in charge of all daily activities and operations. He will continue to report directly to Doug Bello, the company's president and founder.

### Westcor Names Director of Lender Services

Westcor Land Title Insurance Co. announced Cristy Ward, the former EVP of sales of a national title agency, has joined the company as director of lender services. Westcor's newly formed Lender Services Group is designed to meet the changing demands of the lending community.

### Colorado-Based Title Company Names President, Makes Acquisition

LenderLive Settlement Services, a wholly owned subsidiary of LenderLive Network Inc., a domestic-based, end-to-end mortgage services provider, named Joe Mowery as president. Previously, Mowery served as vice president of lender services for a division of Fidelity National Financial; senior vice president and strategic accounts director at First American Title Insurance Co.; and executive vice president at Lenders First Choice. LenderLive also recently acquired MoKan Title Services LLC. Amy Wilson has been named vice president of default operations for LenderLive Settlement Services. In addition, Berry F. Laws III will remain as Of Counsel for the law firm and join LenderLive Settlement Services in the capacity of director of strategic initiatives.

### Stewart Names Agency Services Manager for New Jersey

Stewart Title Guaranty Co. has appointed Michael Frederick as vice president and agency services manager for New Jersey. He will be responsible for establishing new and supporting agency relationships within the state. Frederick has more than 20 years of sales experience servicing agencies in the title insurance industry and has served as a delegate to the New Jersey Land Title Association during his career.

### reQUIRE Announces Expansion Efforts

reQUIRE Release Tracking, a national release tracking company, announced that Joe Troilo will spearhead its expansion into New York, while Alan Shumate joined the company as northern Virginia account manager. As reQUIRE continues to expand, Troilo will be responsible for introducing reQUIRE's release tracking service to attorneys, settlement agents and title companies in Long Island, New York City and surrounding areas of southern New York. Meanwhile, Shumate will be responsible for building and strengthening accounts, and selling reQUIRE services to attorneys and title agents in Northern Virginia.

### Madison Title Names Director of Texas Operations

Madison Title Agency, a full-service, nationwide title agency affiliated with Madison Commercial Real Estate Services (MCRES), named Ronald Addison as its director of Texas operations and state counsel. Based in Madison's regional offices in Dallas, the veteran real estate attorney will be responsible for managing the agency's southwest client portfolio. From 1997 to 2006, Addison was vice president and associate counsel at Stewart Title North Texas, Inc., where he provided legal expertise and interpreted case law, legislation, and Department of Insurance rules, regulations and bulletins.

## Send Us Your News

We want to share news about your company. Send information about new hires, acquisitions, expansions or other news to Jeremy Yohe at [jyohe@alta.org](mailto:jyohe@alta.org).



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Bill Burding  
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Pam Day  
*Day Title Services*

Diane Evans  
*Land Title Guarantee Company*

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Michelle Korsmo  
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POLITICAL ACTION  
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## ALTA Engaged With NAIC on Several Fronts

There's no questioning the importance of ALTA's advocacy efforts at the federal level. To see this first hand, attend ALTA's Federal Conference and Lobby Day in May. ALTA advocacy is equally important with the National Association of Insurance Commissioners (NAIC), and last month's NAIC Spring Meeting proved it.

The title insurance industry was well represented. I joined Diane Evans, an ALTA board member and chair of the Title Insurance Agents Section, Ted Rogers, a member of the Title Insurance Underwriters Section, Justin Ailes, ALTA's vice president of legislative and regulatory affairs, and roughly 20 other ALTA members in New Orleans for the meeting.

Discussion at the meeting focused on insurer solvency, escrow theft and consumer shopping. Diane, vice president of regulatory and legislative affairs for Land Title Guarantee Co., spoke about escrow theft from an agent's perspective to the Title Insurance Market Conduct and Mortgage Fraud Working Group. She shared how a few bad agents cast a negative image on the industry, and offered what ALTA is doing to combat the problem.

ALTA's relationship with the NAIC is paying off as the Working Group asked us to provide input on a white paper the NAIC is writing on escrow theft. They also asked us to provide examples of how the industry protects escrow funds. The title industry is at the table instead of on it.

The Title Insurance Task Force meeting is the main event at the NAIC for the title industry. It has become much more active than ever before and made five specific referrals to other NAIC committees to assist in its work. During the Title Task Force meeting, Ted Rogers, CEO of Security Title Guarantee Corp. of Baltimore, pressed the NAIC for more clarity of state statutes on closing protection letters (CPLs). The discussion included CPL liability as the underlying cause of insurer failures and the need to manage this risk. CPLs will be a part of the Title Task Force's white paper and future committee discussions.

The NAIC's Financial Examiners Handbook Technical Group is debating whether to add risk-focused financial exams for title insurers. In addition, the Capital Adequacy Task Force is working with the Title Insurance Task Force to consider Risk Based Capital requirements for title insurers.

As you can see, there is unprecedented attention on the industry at the NAIC. Fortunately, because ALTA members are engaged, the industry is at the table.

Send me an email at [nhacker@alta.org](mailto:nhacker@alta.org) if you would like to know more about the NAIC.

- Nick Hacker, ALTA manager of state government affairs



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