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American Land Title Association

TitleNews



Best Practices: Road Map to Implementation

Utilize ALTA Member-benefit
Resources such as Checklists
and Webinars



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ALTA CONFERENCES

October 9-12 | 2013 Annual
Convention
Palm Beach, FL

BEST PRACTICES MEETINGS

June 6-9 | Wyoming
Evanston, WY

STATE MEETINGS

June 2 - 4 | Pennsylvania
Cambridge, MD

June 5 - 7 | South Dakota
Mitchell, SD

June 6 - 7 | Virginia
Beach, VA

June 9 - 11 | New Jersey
Baltimore, MD

June 9 - 11 | Wyoming
Evanston, WY

June 13 - 15 | Arkansas
Jonesboro, AR

June 17 - 18 | DC
Baltimore, MD

June 19 - 21 | Texas
Austin, TX

June 20 - 23 | New England (CT,
ME, MA, NH, RI, VT)
Cape Code, MA

July 11 - 12 | Illinois
East Peoria, IL

July 14 - 16 | Michigan
Thompsonville, MI

August 7 - 10 | Kansas
Manhattan, KS

August 8 - 10 | Minnesota
Brainerd, MN

August 15 - 17 | Pacific Northwest
(ID, MT, OR, UT, WA)
Portland, OR

August 18 - 21 | New York
Lake Placid, NY

August 29 - 31 | Dixie Land
(AL, GA, MS)
Orlando, FL

September 5 - 7 | North Carolina
Hot Springs, VA

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And Then Came Monday

I suspect you enjoy the spring season and the sense of new promise it brings as much as I do. It's such a mesmerizing sight to see the cherry blossoms in Washington, D.C., explode in a sea of stunning pink and white as they hit peak bloom. Unfortunately, this spectacle doesn't last long. Depending on the weather, the blooms only last up to 14 days.

The challenge is finding ways to focus on making spring's optimism last longer than two weeks. The optimism fades with the stress of our commute. A transaction falls through and it's difficult to remember the sense of hope in finding new business. How do we see past individual frustrations to the bigger picture?

One activity that keeps me energized is gathering with ALTA members during our conferences and meetings. I see cheerful optimism exude from attendees as well. In March, we held our Business Strategies Conference in Oklahoma City and we enjoyed our highest attendance in five years. Attendees were focused on taking action items from sessions back to their offices and implementing pillars of ALTA's Best Practices.

In May, as this edition goes to print, a record-setting number of title professionals took to Capitol Hill to meet with members of Congress and their staff to explain the industry's valuable role in the real estate process. Both conferences were full of energy and spirit, but we must ensure this spirit lasts longer than the cherry blossoms in D.C.

Keep working toward implementing parts of the Best Practices and talk with your lender clients about what they need from you to ensure regulatory demands are being satisfied. Remember to take advantage of all the Best Practices resources provided by ALTA. I encourage you to check out our cover article on page 10 to learn more.

We also must remain vigilant about educating others about the great service we provide to the real estate transaction. With the spring home-buying season expected to be the strongest in years, we reached out on several fronts to educate consumers. First, ALTA President Frank Pellegrini participated on the National Association of Realtors' radio show, Real Estate Today. This gave us an opportunity to educate more than three million consumers and thousands of real estate agents about the closing process. Additionally, we distributed a series of press releases highlighting the valuable role ALTA members play in the closing process and the importance of title insurance. You can find these releases at www.alta.org/press/releases. We encourage you to share these messages with your customers or adapt the releases as your own and send them to your local media.

To stay engaged on the advocacy front, I encourage you to read my weekly Advocacy Update and join the Title Action Network (www.titleactionnetwork.com). We'll provide information on what you can do to advocate for your industry.

We want your business to bloom all year round, but keeping positive momentum is challenging. It's easier if you use the resources around you, like the network you build through ALTA. Remember, your ALTA staff is here to help!



- Michelle Korsmo, ALTA chief executive officer



Help Us Help You: Do You Know a Member of Congress?

One of ALTA's priorities is to provide excellent representation of the land title industry on Capitol Hill. To help us achieve this, please take two minutes and complete our survey to identify current relationships between ALTA members and members of Congress.

Your participation will help ALTA ensure we have the best possible contacts on Capitol Hill to showcase further the incredible value of the land title industry. To take the survey, please go to www.surveymonkey.com/s/ALTAkeycontacts

Learn How to Adapt Your Processes to Meet New Market Demands at an Agents and Abstractors Forum

Two more Agents and Abstractors Forums are slated for 2013 to help members meet lender clients' needs. During the Sept. 16 Forum in Boston, Michael Volin of Title Resource Group will address physical privacy and security and the important steps you can take toward satisfying privacy obligations as well as how to develop detailed policies for handling non-public personal information.

Meanwhile, attendees at the Forum being held Sept. 23 in Minneapolis will learn how bulletins, rules

and regulations for lenders issued by the CFPB may impact their title operations. Francis X. Riley III of the law firm Saul Ewing will detail primary Dodd-Frank Act related regulation of bank and non-bank lenders that have been or will be promulgated by the CFPB or other regulatory entities. He'll then dissect which regulations may impact your business strategies and relationships.

Please go here to register: www.alta.org/meetings/smallagents

Submit Presentation Proposals for 2013 Annual Convention

There's no better way to share your industry knowledge and expertise than speaking at ALTA's 2013 Annual Convention, which will be held Oct. 9-12 at The Breakers in Palm Beach, Fla.

If you would like to submit a session proposal, ALTA's Call for Presentations will be open through May 31.

All session proposals should be educational and limited to a maximum of four speakers. We are looking for high-level sessions that deal with the industry and business

practices from a business management perspective as the attendees of the convention tend to be the owners or top-level managers from our member companies. Sales pitches for products or services disguised as proposals will be eliminated. To learn more about the process, please visit www.alta.org/meetings/annual/cfp.

ALTA leadership, volunteers and staff will review proposals. Decisions on proposals are expected to be made by the end of June.

Get Your Company in Front of Decision Makers

ALTA is focused on keeping you in touch with prospects and existing customers. Through advertising, sponsorships and presentation opportunities, ALTA makes it easy for you to educate your prospects, achieve brand recognition and stay ahead of the competition. Check

out ALTA's 2013 Marketing Opportunities brochure to review remaining marketing opportunities.



Bill Introduced to Exclude Affiliated Title Charges from QM Provision

A bipartisan bill introduced in the U.S. House of Representatives would modify the definition of points and fees in the Dodd-Frank Act's Ability to Repay/Qualified Mortgage (QM) provisions.

H.R. 1077, titled the Consumer Mortgage Choice Act, was introduced in the U.S. House of Representatives by Rep. Bill Huizenga (R-MI). Under Dodd-Frank, loans that have points and fees in excess of 3 percent of the loan amount cannot qualify for the Qualified Mortgage definition that allows lenders to meet the ability to repay test. H.R. 1077 would exclude title charges and certain escrow charges if they are paid to an affiliate of the originator under the law's calculation for the 3 percent cap for points and fees. Title charges paid to non-affiliated agents are already excluded.

The bill would amend the definition of "points and fees" to:

- Exclude affiliated title charges;
- Prevent double-counting of loan officer compensation;
- Clarify escrow charges;
- Exclude loan-level pricing adjustments; and

- Exclude lender-paid compensation to a correspondent bank or mortgage brokerage in a wholesale transaction.

H.R. 1077 is cosponsored by Reps. David Scott (D-GA), Ed Royce (R-CA), William Lacy Clay (D-MO), Steve Stivers (R-OH), Gregory Meeks (D-NY), Spencer Bachus (R-AL) and Gary Peters (D-MI).

When a similar bill was introduced last year, ALTA's Board of Governors indicated that ALTA will serve as a resource to its members and offer them advice if they want to advocate on this issue, regardless of their position. The Board recognizes that ALTA members' positions on this issue will be mixed—usually based upon a person's position on affiliated business. Because of this, ALTA will continue to serve as a resource to its members and offer them advice if they want to advocate on this issue. If interested in engaging with your member of Congress on this issue, contact Justin Ailes, ALTA's vice president of government affairs, at jailles@alta.org.

10 ALTA Forms Published as Final

The following forms, which were approved by the ALTA Board of Governors in February, have been published in final and bear an effective date of April 2, 2013:

- ALTA Endorsement 9.6-06 Private Rights – Loan Policy (4-2-13)
- ALTA Endorsement 9.9-06 Private Right – Owner's Policy (4-2-13)
- ALTA Endorsement 9.10-06 Restrictions, Encroachments, Minerals – Current Violations – Loan Policy (4-2-13)
- ALTA Endorsement 12-06 Aggregation – Loan Policy (4-2-13)
- ALTA Endorsement 12.1-06 Aggregation – State Limits – Loan Policy (4-2-13)
- ALTA Endorsement 28.2-06 Encroachments – Boundaries and Easements – Described Improvements (4-2-13)

- ALTA Endorsement 32.1-06 Construction Loan Pending Disbursement (4-2-13)
- ALTA Endorsement 32.2-06 Construction Loan – Loss of Priority – Insured's Direct Payment (4-2-13)
- ALTA Endorsement 39-06 Policy Authentication (4-2-13)
- ALTA Short Form Limited Coverage Junior Loan Policy (4-2-13)

The following two forms, which also were approved by the ALTA Board, were withdrawn from final publication by the Forms Committee for further consideration and development based on the comments received:

- ALTA Endorsement 11.2-06 Mortgage Modification with Additional Amount of Insurance
- ALTA Endorsement 40-06 Tax Credit.

Get Started on Your NTP Requirements

ALTA's National Title Professional (NTP) designation program provides an opportunity for land title professionals to demonstrate their knowledge, experience and dedication to the land title industry. The designation has several elements, including industry and

compliance prerequisites, and training requirements.

For more information or to submit an application for the designation, go to www.alta.org/ntp.



Joining Forces

At First American Title, we know that succeeding in an ever-changing market takes hard work. That's why we'd like to thank our agents for the work we do together and the success that our agent partnerships will continue to bring.



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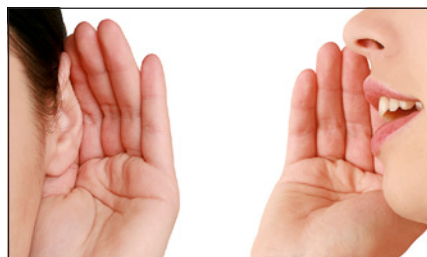
May = Social Sharing

Join ALTA this May for “Social Sharing” as we provide consumers and members with important information about the real estate closing process, the need for an owner’s title insurance policy and the services ALTA provides. We will package all of this information so it can easily be shared on your own social media platforms.

Social Media Tip: Create a Better Dialogue on LinkedIn

Last month, LinkedIn announced a new “mention” feature for status updates. To use this tool, start typing a person’s name and a drop down menu will appear. Choose the correct individual and a notification will be sent letting the person know you mentioned them. This is a great way to increase visibility with your professional connections. My first “mention” post: “Congratulations to Craig Haskins on a successful company campaign for the Title Action Network!”

If you have any questions about this tip, or have a tip of your own, contact Wayne Stanley, ALTA’s manager of external communications, at wstanley@alta.org.



March Title Madness

Hundreds of title professionals took part in our March Title Madness as we asked various title trivia questions during the month. Popular questions included whether a quit claim conveys title exactly the same as a warranty deed and in land measurements if a surveyor’s chain is 120 feet long. Those who correctly answered the question correctly first received a prize.



Best Practices All the Time

Looking for help implementing parts of ALTA’s Best Practices? Members can access the checklists at www.alta.org/bestpractices for each pillar of the Best Practices to assist in the process and organize your efforts. There’s also additional resources such as recorded webinars and informative articles to help with implementation.

On the Radio

Last month, ALTA President Frank Pellegrini was a guest on the National Association of Realtors’ radio program, Real Estate Today, to discuss the importance of purchasing an owner’s title insurance policy. The radio show reaches nearly three million consumers and more than 10,000 Realtors. Go to our Facebook page (facebook.com/altaonline) to listen to the interview and be one of many who have shared the post on their own page.



Best Practices: Road Map to Implementation

Utilize ALTA
Member-benefit Resources
such as Checklists and Webinars

Like many ALTA member companies across the country, Montana-based American Title & Escrow already followed many of the procedures outlined in ALTA's "Title Insurance and Settlement Company Best Practices." Many were not put in writing, however.

"We are in the process of writing policies on each one of the Best Practices and also examining our processes and making improvements as needed," said Carol Kirby, operations director for American Title & Escrow.

The company recently implemented a "clean desk" policy. Kirby said documents with personal information are scanned when they come into the office and then shredded. Any paper files with personal information, such as original documents and affidavits, are kept in a locked file. Settings on computers have been changed to lock when not in use. The company plans to address the issue of securing information in emails during the third quarter of 2013. >>

By Jeremy Yohe



“ALTA’s Best Practices has been a good thing for all title companies because it has caused us to take the time to step back and look at how we can improve our processes,” Kirby said.

Shonna Cardello, president of White Rose Settlement Services in Pennsylvania, agreed with Kirby that the Best Practices helped formalize processes that were already in place.

“We had a system, but it was not written down,” she said. “ALTA does a phenomenal job of providing information to help its members be compliant.”

Cardello focused on enhancing procedures regarding escrow accounting and protecting Non-public Personal Information (NPI). She’s working with a vendor to help automate account reconciliations, which will enable the company to find errors within a day and make any necessary corrections. Additionally, the vendor assists White Rose Settlement with Positive Pay. The vendor submits checks to the bank throughout the day, saving Cardello’s employees time and giving her clients a more efficient system. She uses another vendor to securely send messages containing NPI.

“I don’t think most title agents realize that the HUD-1 is a non-public, personal document, especially with the addition of page three in January 2010,” she said. “With the FTC starting enforcement actions, we as an industry need to band together to ensure the safety of the information. Lenders require all documents to be sent securely and we must require the same.”

Chris St. John, president of Kansas-based Lawyers Title of Topeka, added that the Best Practices provide a basic framework to evaluate

the company’s business processes and provide insight where improvements were needed.

“Once we have documented our processes, we will be able to show our customers we are ready to do business in the future,” St. John said.

While many members have used ALTA’s resources as guidance, others, such as Martha McConnell, president of the Palmetto Land Title Association, took advantage of the Best Practices checklists. She used these during seminars and in a series of memos to educate agents on the importance of implementing pillars of the Best Practices.

In April, ALTA President Frank Pellegrini met with Richard Cordray, director of the Consumer Financial Protection Bureau, for the second time in six months to discuss items impacting the industry, including Best Practices.

“As the Bureau continues to enhance its supervision and examination program, we hope that the CFPB will encourage financial institutions to consider utilizing ALTA’s Best Practices as part of their compliance management process,” Pellegrini said.

The following is a compilation of checklists as well as tips on

complying with the pillars of the Best Practices.

Resources to Ensure Proper Licensing, Compliance

While there are many parts to the Best Practices, one item that title agents, settlement providers and attorneys can easily implement is to begin maintaining an electronic or hard-copy folder with up-to-date licensing information. This can include company or individual employee licenses. Maintaining state-mandated insurance licenses and corporate registrations (as applicable) ensures that the company remains in good standing with the state.

State insurance departments are a good source for company and agent licensing information. The National Association of Insurance Commissioners provides a map with information and links to states or jurisdictions. The map is located at www.naic.org/state_web_map.htm.

Additionally, ALTA compiles details on state laws relating to the licensing and operating requirements of title insurers, title agents, abstracters, and escrow and closing agents in Title Insurance Regulatory Survey. The survey can be purchased by volume, containing the regulatory

Checklist For Licensing

Best Practice Step	Description
<input type="checkbox"/> <i>Applicable business licenses</i>	Have applicable business license(s) and maintain compliance with licensing, registration, or similar requirements with the applicable state regulatory department or agency
<input type="checkbox"/> <i>ALTA’s Policy Forms Licensing requirement</i>	Any issuing agent of title insurance is required to hold a license for the continued use of ALTA’s policy forms. For more information, go to www.alta.org/membership/policyformslicense_FAQ.pdf
<input type="checkbox"/> <i>Collect licensing information</i>	Maintain an electronic or hard-copy folder with up-to-date licensing information

details on one of six regions of the country, or as a complete set featuring all 50 states and the District of Columbia. For more information, go to: www.alta.org/publications/tirsdownload.

Also, any issuing agent of title insurance is required to hold a license for the continued use of ALTA's policy forms. Cost of a Policy Forms License is \$195. Membership with ALTA includes a Policy Forms License for no separate cost. For more information, go to: www.alta.org/forms.

Tips on Documenting Your Escrow Trust Account Policies

The second pillar of ALTA's Best Practices encourages title professionals to adopt and maintain appropriate written procedures and controls for escrow trust accounts allowing for electronic verification of reconciliation. Appropriate and effective escrow controls and staff training help title and settlement companies meet client and legal requirements for the safeguarding of client funds. These procedures ensure accuracy and minimize the exposure to loss of client funds. Settlement companies may engage outside contractors to conduct segregation of trust accounting duties.

Pam Sember, who is a business development manager for First American SMS' trust accounting operations, said that by reviewing processes and procedures, companies may find they already have the proper policies in place. They also may find processes that need to be changed.

"Doing this will enhance your company's culture," she said. "Getting started can be the hardest part."

To start documenting policies and procedures for escrow trust accounts,

Checklist For Escrow/Trust Accounts

Best Practice Step	Description
<input type="checkbox"/> <i>Include account numbers and type for each bank account on checklist</i> <input type="checkbox"/> <i>Make an electronic image of account information and place into a Controls and Procedures file for external audit</i>	Verify operating account and escrow trust account(s) are separate
<input type="checkbox"/> <i>Document conversation(s) and image all written correspondence/ authorizations into escrow file or Controls and Procedures File</i> <input type="checkbox"/> <i>Provide your banking institution with names of personnel authorized to initiate or approve all banking transactions</i> <input type="checkbox"/> <i>Determine number of approvals and approval level required to initiate an outgoing wire</i> <input type="checkbox"/> <i>List all authorized signers in a secure banking file</i>	Utilize Positive Pay, automated clearing house blocks and international wire blocks, if available
<input type="checkbox"/> <i>Perform a three-way reconciliation at least monthly</i> <input type="checkbox"/> <i>Reconcile receipts and disbursements at least daily</i> <input type="checkbox"/> <i>Segregate duties so reconciliation is not performed by an escrow trust account signatory or approver of bank transactions</i> <input type="checkbox"/> <i>Create and approve complete reconciliation in electronic format for your records, underwriter(s) or audit(s)</i>	Reconcile escrow trust accounts

an electronic file needs to be created and labeled something to the effect of "Controls and Procedures." Then, a checklist should be drafted that includes the date created and the frequency of internal control audits. All of the documents should be imaged into the Controls and Procedures file.

When creating a written document for procedures, title agents and attorneys should outline on company letterhead each procedure when handling consumer funds. Make sure to date the creation of the document. All employees that complete each task should be given a copy of the procedures and be asked to sign the document, acknowledging they agree to follow the rules as outlined.

"You will quickly fill out checklists if you align your controls and procedures with ALTA's Best Practices," Sember advised.

All banking account information should be documented and included in the control document. This includes escrow trust accounts, operating account, any interest-bearing accounts (including IOTA or IOTLA) and any recording or premium accounts.

"Remember to include any account that is used for consumer funds," Sember said.

To prove your escrow trust accounts are set up properly, Sember said to create an image of bank statements, deposit tickets and a check copy for each account that is in your Control and Procedures file. The words "escrow account" or "trust account" should appear on each of these accounts.

"If they don't, contact your bank to add these words and verify that your accounts are set up as escrow or trust accounts," Sember added.

Signing up for Positive Pay and electronic banking, while setting up blocks for ACH and international wires are safeguards that provide another layer of protection for consumer funds.

By compiling all banking information into one document, the information can easily be updated if new accounts are opened, existing accounts are closed or a company makes changes in authorized personnel.

Transitioning to documenting procedures, Dick Reass, CEO of Ryhnoh Live, said reconciliation of escrow trust accounts can't be performed by anyone who is authorized to approve financial transactions.

"Segregation of duties must be in place," he added.

In addition, reconciliations should be completed in an electronic format, filed with company records and made available to underwriters. The reconciliation file should include the following:

- complete reconciliation of all accounts
- daily 2-way and monthly 3-way
- reconciliation exception summary with explanation
- outstanding item checklist
- deposit in transit
- bank statement(s)
- transaction reports
- trial balance
- approval document

"If you are relying on a third party to perform reconciliations, you still need to carefully review the reconciliation because you are ultimately responsible for the money on the account," Reass said. "The money in the account is the lifeblood of your company."

In addition, title agents need to document policies to explain any outstanding file balances and/or uncashed checks that linger for more than 180 days. Also, agents must prepare, send and image due diligence letter(s) for uncashed checks. Status of uncashed checks also should be documented.

"When preparing your controls and procedures documents, remember to include the who, what when, where and how," Sember said. "After documenting all of your controls and procedures and saving them into an electronic file, you will be

able to print and provide them when needed."

Know What's Considered Non-public Personal Information and Where It's Located

The third pillar of ALTA's Best Practices encourages companies to adopt and maintain a written privacy and information security program to protect NPI as required by local, state and federal law.

To be able to comply with this pillar of the Best Practices, it's important to understand what constitutes NPI and where it can be found in a company, including how

Checklist For Non-Public Personal Information: Physical Security

Best Practice Step	Description
<input type="checkbox"/> <i>Establish a policy for conducting background checks for all employees with access (or potential access) to NPI</i>	Restrict access to NPI to authorized employees who have undergone background checks at hiring
<input type="checkbox"/> <i>Password-protect or encrypt devices, data and files containing NPI</i>	Protect NPI stored on removable media, especially when media is carried while traveling
<input type="checkbox"/> <i>Create a policy limiting an employee's ability to leave documents, portable devices or electronic media containing NPI in a location (unlocked vehicle, hotel room, etc.) accessible to others</i>	
<input type="checkbox"/> <i>Establish a policy that it is the user's responsibility to protect portable devices in their possession from theft or unauthorized access</i>	
<input type="checkbox"/> <i>Establish procedures for couriers and closers to protect against unauthorized disclosure of NPI</i>	Protect NPI when delivering information to parties outside the company's security system boundaries or firewall
<input type="checkbox"/> <i>Train employees to close paper and electronic files containing NPI when they are away from their desks</i>	Implement a Clean Desk Policy
<input type="checkbox"/> <i>At the end of the work day, all documents, files, portable devices and electronic media containing NPI should be locked in a desk, file cabinet or secure room</i>	
<input type="checkbox"/> <i>Have secure points of entry to the building and any interior offices where NPI may be stored</i>	Maintain physical security for every company location where NPI may be stored
<input type="checkbox"/> <i>Security systems should include individual access codes or personal keys/fobs</i>	

information is collected, acquired, stored, transmitted and disposed. The Federal Trade Commission defines NPI as:

- any information an individual gives you to get a financial product or service (for example, name, address, income, Social Security number or other information on an application);
- any information you get about an individual from a transaction involving your financial product(s) or service(s) (for example, the fact that an individual is your consumer or customer, account numbers, payment history, loan or deposit balances, and credit or debit card purchases); or
- any information you get about

an individual in connection with providing a financial product or service (for example, information from court records or from a consumer report).

Examples of NPI include bank, loan payoff and credit card statements; insurance, retirement and tax information; Social Security numbers and dates of birth; and real estate/title related items, commission amounts and loan fees.

There are many sources within a company where NPI can be found. Physical locations include paper-based files, desktop or reception areas, the closing table and warehouse. With the widespread use of phones with cameras, companies should be cognizant of the documents visible at

the closing table, according to Todd Hougaard of GreenFolders. If the closer steps out to get a cup of coffee, someone could use his or her phone and take a picture of the buyer's loan application, he said.

Meanwhile, there are many electronic locations where NPI is housed. These include:

- computers, network servers, email servers, instant messaging servers, fax servers, copy machines with internal hard drives or network storage devices, web servers
- cloud storage (e.g., Google Drive, Dropbox)
- backup drives, backup tapes, online backup services
- user-provided devices/media (e.g., employee smartphones, tablets, USB storage devices)

Additionally, some of your company's vendors may also possess and manage customer NPI. These include mobile notaries and closers, couriers, online backup services or off-site backup tape storage vendors, email service providers, and server and website hosts. Michael Volin of Title Resource Group said companies should take reasonable steps to select and retain service providers that are capable of appropriately safeguarding NPI. Volin said creating a list of all vendors can aid in this process.

Checklist For Non-Public Personal Information: Network Security

Best Practice Step	Description
<ul style="list-style-type: none"> <input type="checkbox"/> Establish a Network Usage Policy and require all employee and vendor users to read and sign an acknowledgement annually <input type="checkbox"/> Use strong passwords (minimum of eight characters and using a mixture of upper and lowercase letters, numbers and special characters) <input type="checkbox"/> Ensure employees lock workstations when away for more than a few minutes <input type="checkbox"/> Separate accounts and passwords should be established for each individual user; User accounts should not be shared among multiple employees. 	Maintain and secure access to company information technology
<ul style="list-style-type: none"> <input type="checkbox"/> Ensure only authorized persons use company hardware (servers, computers, laptops, tablets, mobile devices, fax machines, copiers, scanners, printers, etc.) <input type="checkbox"/> Ensure unauthorized software is not installed on company hardware <input type="checkbox"/> Ensure user names and passwords are not shared 	Develop guidelines for the appropriate use of company information technology
<ul style="list-style-type: none"> <input type="checkbox"/> Only store NPI on encrypted devices and never store NPI on personal devices <input type="checkbox"/> Train staff to be aware of "snooping" by people on your office to view other clients' NPI <input type="checkbox"/> Establish and own a true business domain email account and address 	Ensure secure collection and transmission of NPI

Proper Recording and Pricing Procedures Helps Ensure Compliant Settlement

Adopting appropriate policies and conducting ongoing employee training can ensure that a real estate settlement company can meet state, federal and contractual obligations governing the settlement process and provide a safe and compliant settlement.

Jerry Lewallen, president of eRecording Partners Network, said it's important for title professionals to document the recording process and designate someone who is responsible for recording documents. Implementing a tracking mechanism is helpful in providing a record of what documents were sent, when they were sent and method of delivery.

The use of electronic recording can aid in the implementation of recording procedures. Currently, nearly 900 jurisdictions in the United States accept e-recording. A list of jurisdictions accepting e-recording can be found on the Property Records Industry Association website: www.pria.us.

According to Jim Degaetano, national sales director for Ingeo Systems, there are five main steps to e-recording. The first step is when the document submitter prepares a document for submission to the county recorder's office or other appropriate agency. In order to be recorded, documents must comply with the standardized formatting requirements. The standards that apply to documents hand carried or mailed to the county recorder also apply to documents transmitted via e-recording. The document is scanned and converted into an electronic image, such as a JPEG or TIFF file. The submitter reviews the image for accuracy and then sends it to the e-record site via the Internet.

Second, e-recording providers receive the document into their system. Each provider has a system for the submitter to load the documents. This process usually includes a secure login, selection of appropriate county of recording, entering a reference value (file number), selection of a document

Checklist For Recording And Pricing

Best Practice Step	Description
<ul style="list-style-type: none"> <input type="checkbox"/> <i>Submit documents for recording to the county recorder (or equivalent) or the person or entity responsible for recording in a timely fashion (generally within two business days of settlement)</i> <input type="checkbox"/> <i>Use electronic recording where available</i> <input type="checkbox"/> <i>Track shipment of documents being recorded</i> <input type="checkbox"/> <i>Respond recording rejections in a timely manner</i> <input type="checkbox"/> <i>Maintain a record verifying documents were successfully recorded</i> 	<p>Determine your legal and contractual requirements for recording documents and incorporate into procedures</p>
<ul style="list-style-type: none"> <input type="checkbox"/> <i>Utilize rate manuals and online calculators</i> <input type="checkbox"/> <i>Ensure discounted rates are charged when appropriate, including refinance and reissue rates</i> <input type="checkbox"/> <i>Review files after settlement to ensure consumers were charged proper rates</i> <input type="checkbox"/> <i>Refund consumers in a timely manner when overpayment is detected</i> 	<p>Develop procedures to ensure customers are charged established rates for services</p>

type (warranty deed, mortgage, etc.), uploading of recordable document, review of document and submission to the county or other agency.

The county recorder or equivalent then accepts the document and accompanying data (such as fees), reviews the document and either accepts or rejects the document. If the document is rejected, the e-recording provider will return the document to the submitter along with the reason why. Common reasons for rejection are failure to comply with the county recording specifications such as margins, failure to affix revenue stamps, incorrect county selections and incorrect fees.

After the document is recorded, it is returned to the submitter. The file-marked document is made available on the provider's website to be viewed or exported. The documents can then be saved or printed.

Last, there's the verification step. Common methods of verification are:

- Date and time of recording is noted in file
- Reports are created to show files that do not include recording information

Patrick Curry, president of Arkansas-based WACO Title Co. said e-recording provides his company an easy way to track what documents were sent to each county and when.

"E-recording also provides a single point of settlement for the payment of recording fees," he said. "If e-recording is not offered in your local county, contact the recorder's office and ask when it will be. Since most county recorders are elected, if you current recorder is not interested, look for a candidate who is interested in the use of technology. The time for getting a document e-recorded is typically hours while the paper process can take days to weeks."

Curry added that once a document is recorded, it is important to include that information in the order file.

“You would want to include the document number from the recording office, the date the document was recorded and the fees actually paid,” he said. “At this point you would also want to compare the fees that were collected at the closing with the fees actually charged by the county.”

Judi Souza, owner of California-based Escrow Expertise, urged title professionals to use rate manuals and online calculators, as appropriate, to make sure correct fees such as title insurance premiums, state-specific fees and endorsements are charged.

“Prior to settlement, your staff should be adept at calculating the accurate amount to be collected for recording charges and associated transfer fees,” Souza said. “These are established by the governmental agencies and the precise charges should be accurately reflected in the consumer settlement statements.”

Three areas in which costs can easily be obtained are wire transfers of funds, overnight delivery fees and notary services, she added. Financial institutions handling trust funds can inform your company of any fees they may charge for incoming and outgoing wire transfers of funds. Meanwhile, notary fees are state-regulated and the amounts to be paid through settlement are submitted by the notary public or a document signing service.

“The ultimate responsibility rests with your company,” Souza said. “The need for refunds is greatly reduced when appropriate pricing procedures are followed at the beginning. Periodic review and an internal audit of files can ensure actual fees and costs, without inflation, were

being passed on to the consumer and reflected accurately at settlement.”

Understanding Professional Insurance Coverage

With insurance providers leaving the market and rates continuing to increase, it’s important for title professionals to understand their policies, maximize coverage and minimize cost.

With claims remaining high, insurance carriers are taking action to lower liability. First, deductibles are increasing. According to Adam Gwaltney of Ritman & Associates, the \$5,000 deductible is “going the way of the dodo bird. The industry is

moving toward \$10,000 to \$20,000 deductibles. They want you to have skin in the game.”

Also, insurance carriers are implementing minimum revenue requirements for new accounts and renewals. Gwaltney said this means if companies don’t generate a certain amount in revenue, they will get rejected for coverage. There also are maximum revenue requirements. “They are narrowing the box to reduce risk,” Gwaltney said.

Additionally, policies are excluding specific services and carving out coverage. This is where a lack of understanding about the title insurance industry by the professional

Checklist For Insurance Coverage

Best Practice Step	Description
<ul style="list-style-type: none"> <input type="checkbox"/> Explain to an insurance broker that you require an E&O policy covering the risks inherent in your business mix or model <input type="checkbox"/> Secure an E&O policy covering the risks from the taking of an order through policy issuance <input type="checkbox"/> If you rely upon independent searchers, verify your broker obtains a policy covering searching errors from these sources <input type="checkbox"/> Respond thoroughly to questions concerning title search procedures, closing services, transaction volume, revenue and number of employees <input type="checkbox"/> Ensure policy covers the risks created by your title agency's size, services and procedures and avoid “off-the-shelf” policies 	Obtain an amount of professional liability insurance that is acceptable to your underwriter, given the company’s size, complexity and scope of operations in an amount not less than agreed to in your underwriting agreement(s)
<ul style="list-style-type: none"> <input type="checkbox"/> Determine if fidelity coverage is required by state law or contractual obligations <input type="checkbox"/> Contact an insurance broker and get the necessary coverage 	Obtain the required amount of fidelity bond coverage from a carrier that is acceptable to your underwriter; if not required, obtain coverage given the company’s size and scope of operations
<ul style="list-style-type: none"> <input type="checkbox"/> Determine if surety coverage is required by state law or contractual obligations <input type="checkbox"/> Determine if your underwriter for the transaction carries an agent surety bond 	Obtain the required amount of surety bond coverage from a carrier that is acceptable to your underwriter; if not required, appropriate amount of surety coverage from a carrier that is acceptable to the underwriter

insurance agent can get clients into trouble. Policies may only provide coverage for the named insureds and exclude the use of contract workers and lawyers. Title agents are encouraged to review their policy to determine if independent contractors are covered. If not, ask the carrier to consider adding coverage. If the insurance carrier refuses, Gwaltney encourages title agents to shop for coverage.

Some policies may require a written contract of services and expectations between the title agency and any independent contractors. This should include an outline of services to be rendered, payment structure and risk management required by the title company for the contractor. Some E&O policies may require independent contractors to carry their own insurance.

“Reducing and mitigating the IC risk up front will aid you in the event of a claim generated by an

independent contractor,” Gwaltney said.

David Townsend, CEO of Agents National Title Insurance Co., reminds ALTA members that errors and omissions insurance are claims-made policies. This means a title company must have coverage in place when a claim is made and reported. The retroactive date is the linchpin as this is when coverage begins. This date will be noted in the policy on the declarations page or on an endorsement. There is no coverage for professional services prior to the retro date. If there’s a lapse in coverage, the retro date could be lost.

Townsend encourages title agents to review their underwriter contract to see if it requires E&O coverage and retroactive dates.

Policies are designed to cover professional services for a title agent, title abstracter, searcher, escrow officer, closing agent, public records

searcher and corporate document searcher.

Tips for title professionals:

- Be alert and cautious to insurance agents who don’t understand claims-made coverage or professional liability insurance. Working with an insurance agent who doesn’t understand the intricacies of claims-made insurance can place a title agent’s business at risk.
- Read the policy and understand the endorsements.
- Clearly identify and understand the exclusions under the policy.
- Understand the information contained in the declarations page.

Meanwhile, fidelity bond coverage—also known as crime protection coverage—provides coverage for dishonest and fraudulent acts of employees in handling money or other securities. These claims-made policies generally only cover employees, while owners are not covered. Directors or officers of the company may not be covered, but expanded coverage can be obtained.

Some fidelity bonds or crime policies require a conviction before payment, according to Townsend. This means a title company must initially cover the loss and will get reimbursed if there’s a conviction.

When shopping for a fidelity bond, you will need to consider the deductible, the number of transactions, the average transaction size and the number of offices to be covered. Fidelity bond providers will analyze several factors, including the number and size of transactions, number of employees, procedures and internal controls and wire procedures, how long the company has been in business and any claims history.

Checklist For Policy Production, Delivery and Remittance

Best Practice Step	Description
<input type="checkbox"/> <i>Develop a procedure for delivery of policies to insureds</i>	Title insurance policies are issued and delivered to customers in a timely manner to meet statutory, regulatory or contractual obligations
<input type="checkbox"/> <i>Develop mechanism to track when insureds receive policies</i>	Issue and deliver policies within 30 days of settlement if terms and conditions of title insurance commitment have been satisfied
<input type="checkbox"/> <i>Transmit title policy data and policy images to underwriter using a standard format as part of an integrated process to avoid rekeying and errors</i>	Title insurance policies are reported and premiums are remitted to the underwriter in a timely manner to meet statutory, regulatory or contractual obligations
<input type="checkbox"/> <i>Remit premiums from trust or premium accounts to underwriter by the last day of the month following the month in which the insured transaction was settled</i>	
<input type="checkbox"/> <i>Confirm receipt of policy data and premiums with underwriter</i>	

Checklist For Customer Care

Best Practice Step	Description
<input type="checkbox"/> <i>Point person for consumer complaints</i>	Identify a key person on staff responsible for handling customer complaints; this person should have experience with customer relations as well as industry experience in order to understand nature of any complaints
<input type="checkbox"/> <i>Document complaint-handling process</i>	Create an electronic or paper file to document company's process of handling customer complaints
<input type="checkbox"/> <i>Maintain log of consumer complaints</i>	Create an electronic or paper file to record consumer complaints; document the call, the concern and any necessary follow up

Best Practices Webinar Series

ALTA is providing a series of webinars to help members implement pillars of the Best Practices. Here's a look at upcoming presentations as well as recorded and archived webinars. Registration information for upcoming webinars, as well as recorded presentations are available at www.alta.org/titletopics.

Upcoming Webinars

- **Maintaining Appropriate Professional Liability Insurance and Fidelity Coverage** (2:00 p.m. ET, Wednesday, June 12)
Presenters: Matthew Baron and Jean Claude Mazzola of *Wilson Elser Moskowitz Edelman & Dicker LLP*
- **Implementing Procedures to Enhance Customer Care** (Date to be determined)
Presenter: Terri Miller of *H.B. Wilkinson Title Co.*

Recorded and Archived Webinars

- **How to Document Your Escrow Trust Account Policies**
Presenters: Pam Sember of *First American SMS* and Dick Reass of *RynohLive*
- **Implementing a Plan to Protect Non-public Personal Information**
Presenters: Todd Hougaard of *GreenFolders* and Michael Volin of *Title Resource Group*
- **Implementing Recording and Pricing Policies**
Presenters: Judi Souza of *Escrow Expertise*, Patrick Curry of *WACO Title Company*, Jerry Lewallen of *eRecording Partners Network* and Jim DeGaetano of *Ingeo Systems*
- **Implementing Policy Production, Delivery, Reporting and Remittance Standards**
Presenters: David Townsend of *Agents National Title Insurance Co.* and Craig Haskins of *Knight Barry Title*

Procedures for Resolving Consumer Complaints

A written complaint handling policy is a good way to ensure that issues are taken seriously and dealt with appropriately and consistently. ALTA's Best Practices encourages members to adopt and maintain procedures for resolving consumer complaints.

A process for receiving and addressing consumer complaints is important to ensure that any instances of poor service or non-compliance do not go undiscovered.

ALTA members should make it easy for customers to contact their company by ensuring contact information—whether it's a phone number or email address—can easily be found on the company website.

As a suggestion, ALTA members can use the Better Business Bureau (BBB) Code of Business Practices as a guide to develop a consumer complaint process. A portion of the code advises companies to handle consumer complaints by being responsive and addressing marketplace disputes quickly, professionally and in good faith. ■

Notice

This information is not a substitute for legal advice, is for your reference only, and is not intended to represent the only approach to any particular issue. This information should not be construed as legal, financial or business advice, and users should consult legal counsel and subject-matter experts to be sure that the policies adopted and implemented meet the requirements unique to your company.

Warehouse Lenders Take Agent Vetting In-house

More Lenders Expected to Follow Suit in Order to Help Standardize Process and Control Nature of Audit

Possibly signaling a trend in the marketplace, several warehouse lenders recently began vetting closing and settlement agents themselves rather than using an outside vendor.

ALTA recently obtained closing agent applications that warehouse lenders sent to member companies in California. The applications came from American Financial Network (which provides funding in California, Arizona, Hawaii, Idaho, Nevada, Oregon, Texas, Utah, Washington and Wisconsin), Sierra Pacific Mortgage (which provides funding in 47 states except Alaska, Mississippi and Alaska) and W.J. Bradley Mortgage Capital (which provides funding in 20 states).

Chuck Cain, senior vice president at WFG National Title Insurance Co., believes more larger lenders will handle agent vetting themselves rather than rely on a third-party company.

“The larger the lender the more inclined they will be to take it in-

house so they can address issues they deem the most important,” he said. “Lenders want to control the nature of the audit.”

American Financial Network (AFN) started sending title and escrow agents these applications late last year and have modified the form several times. Simin Akbar, compliance attorney for AFN, said the lender has received a good response from its service providers on the latest version, which was modified in January. The AFN form asks title and escrow agents to provide a:

- Copy of current E&O policy
- Copy of fidelity bond insurance policy
- Copy of policies, procedures, internal controls, etc. to ensure compliance with federal consumer financial laws
- List of geographic areas served
- Completed contact information
- Signed AFN Closing Agent Approval Application & Agreement

Akbar indicated the lender has the most difficulty obtaining information regarding policies, procedures and internal controls.

Each application varies in the information requested, but the applications reviewed by ALTA require agents to certify they can and will follow state and federal consumer laws. The application from W.J. Bradley references a section of the Dodd-Frank Act. Also, the applications seek information necessary for the lender to verify the identity of the agency and perform a background/credit check on the company and its principals. The lender would perform the checks and would not be paid for by the agent.

Lastly, the applications specify general closing instructions that must be followed. In many instances, these standards are similar to ALTA’s “Title Insurance and Settlement Company Best Practices.”

AFN’s application addresses these standards:

- Compliance with closing instructions
- Satisfy conditions to disbursement
- Industry standard documents
- Handling of closing documents
- Deficiencies in closing documents
- Handling of funds
- Deviations from standards
- Compliance with laws
- Handling of emailed closing documents
- Errors and Omissions insurance
- Fidelity bond
- Indemnification

- Suspension/Revocation of agreement

Cain said the majority of information these agent applications ask for isn't new. Additionally, he said title companies handling foreclosures and REOs for lenders have operated under these requirements and audits for more than a year to ensure their practices follow all financial laws.

"These inquiries and audits predate the CFPB bulletin," Cain said.


A concern is that the lenders are asking closing agents to sign the applications giving authority to perform background checks. Another issue is that in California, typically, the title business and escrow services are provided by different entities. An escrow agent wouldn't know the title information that some of these applications require.

As a suggestion, when a title or escrow agent receives a lender's closing agent approval application, it should be carefully reviewed and signed only if each and every item is understood and able to be complied with. Additionally, the application should be forwarded to a company manager or officer for a more detailed review paying particular attention to what authority the lender is given by the closing agents signing the application. Also, if there are any issues with complying, the closing agent should go back to the lender and negotiate the application terms and/or get clarification.

In the past few months, state regulators and bar associations have voiced concern about lenders using third-party vendors to vet people closing their transactions.

In February, the North Carolina State Bar sent a letter to the Consumer Financial Protection

Bureau (CFPB) outlining its issues with third-party service providers vetting attorneys for the purpose of qualifying them to close real estate transactions.

 "There's been some concern of privacy issues with vetting companies and bringing the vetting process in-house will help standardize it."

"It appears that vetting companies actually do very little substantive vetting," the letter said. "At least upon cursory examination of some of their websites, they appear to ... be doing nothing more than performing glorified credit checks. This kind of vetting is really meaningless since most lenders and title insurance companies doing business in this state require attorneys who are approved to handle matters in which they are involved to carry a specific amount of liability insurance."

In December, the California Department of Corporations issued a bulletin warning that the business models of some third-party vetting companies could lead lenders and escrow agents to inadvertently violate the law. Some third-party vetting companies require that potential service providers pay a fee in order to be prescreened by the companies and to appear on a list of "approved" service providers. The California Department of Corporations' bulletin reminds escrow agents about laws against the payment of referral fees for soliciting escrow accounts, such as the RESPA provision that prohibits the giving or receiving of any fee,

kickback or thing of value for the referral of settlement business.

"The Department of Corporations is closely evaluating the business arrangements of its licensees under

its lending and escrow laws that involve third-party risk management companies, which purport to pre-screen service providers for a fee paid by the service provider," the California bulletin said. "The Department cautions licensees that it may bring an action against licensees that contract with third-party risk management companies or place restrictions on service providers, in a manner that violates the law."

In November, ALTA reported that several warehouse lenders postponed requirements that title and settlement companies obtain certification from third-party vetting companies by Jan. 1, 2013, in order to continue receiving business from them. Among these lenders were First Tennessee Warehouse Group, Texas Capital Bank, Amerisave Mortgage Corp. and Generation Mortgage Co.

Cain said that while agent vetting has been on hiatus, it will come back now that lenders have had a chance to digest what's going to happen.

"There's been some concern of privacy issues with vetting companies and bringing the vetting process in-house will help standardize it," Cain added. ■

good.

better.

fntg.com/bestpractices

never, never rest.

To improve is to change!

Our commitment to our agents is tireless. That is why we have expended significant effort to not only educate our agency personnel about the regulations and requirements proposed by the CFPB, but also to develop strong affiliations with various service providers that can help our agents in meeting the ALTA Best Practices. Change is good, but it can be daunting. We can help you find the best answers to your questions.



Industry Best Practices Dominate Discussion at ALTA's Business Strategies Conference

Attendees Receive Advice on How To Thrive in Changing Market

At the 2013 Business Strategies Conference in Oklahoma City, nearly 275 attendees—a 25 percent increase from 2012—learned how to implement various aspects of ALTA's Best Practices into their operations. Participants also heard about lenders' efforts to reduce reputational and settlement risk, the importance of adapting to change and how to protect against cyber crime threats.

All of these topics were covered in general sessions over two days, while 16 professional development sessions dug deeper into the Best Practices, information/IT security and privacy, legislative and regulatory compliance, and ways to improve operations.

Learning about ALTA's Best Practices seemed to be on the majority of attendees' minds. Attending his first ALTA conference, Lincoln Scoffield said the information provided was very relevant.

"The information regarding best practices was probably the most pertinent," said Scoffield, president of Cornerstone Title in Utah. "I also enjoyed getting to meet other title people and exchanging ideas with them. I'm planning to attend the Annual Conference based on my experience at this one."

Patty Holle of Marshall County Abstract & Title said she decided to attend the conference after hearing an ALTA presentation at her state title school. As a small, two-person operation, her focus was to learn more about the Best Practices.

"The conference was very informative and I hope to attend more of ALTA's conferences," she said. "I liked that there were small companies like mine and some a little bigger, but most it seemed were small operations. I felt we had something in common."

Develop, Implement and Succeed With Best Practices

Opening the general session of ALTA's 2013 Business Strategies Conference on Thursday before more than 200 attendees, ALTA President Frank Pellegrini and Michelle Korsmo, ALTA's chief executive officer, provided an overview of ALTA's Best Practices and elaborated on what the association is doing to provide resources and aid members in implementation.

"With lenders needing concrete evidence that the title and escrow providers they work with understand and follow certain guidelines, we want attendees to walk away from the conference with a list of ideas to take back to their office," Korsmo said.

Pellegrini said title professionals should be assessing their operations now in order to understand what areas, if any, need addressed regarding implementation of the Best Practices.

To help members begin the process, Korsmo outlined the various resources ALTA provides, including checklists, webinars and news articles meant to be tools to help organize efforts to meet the model policies and procedures. In addition, ALTA sends an email every Thursday called *TitleNews* Best Practices Toolkit, which is dedicated to providing information about Best Practices.

Pellegrini said the Best Practices were designed and created to be seen as a solution to lender clients as they seek to fulfill their regulatory obligations. He added that large

lenders have been supportive of the Best Practices framework.

“Lenders give us a lot of money to fund transactions, give us important documents and important consumer information,” Pellegrini said. “Lenders need to know if their providers have the knowledge and integrity to handle this information. Lenders don’t want to disturb the current delivery of settlement services.”

“Members are encouraged to share with their customers progress in adopting the seven pillars of the Best Practices, which were developed to showcase the procedures title professionals follow to maintain the integrity of every closing,” Pellegrini continued. “Parts of these standards have existed within most title offices for a long time. It’s vital the industry explains the important role it plays as the independent third party in the real estate transaction.”

Change Is Inevitable— Growth Is Optional

Taking the stage playing the harmonica, Ira Blumenthal, a speaker, author and business-change expert, referenced the Bob Dylan song “The Times They Are A-Changin’.”

Tying his message to the importance of implementing ALTA’s Best Practices, Blumenthal said that while title veterans probably followed best practices for years, the business landscape is evolving and it’s time to raise the bar and be even better.

“There is one constant in life and business—change,” Blumenthal said. “Yet, change is not new. What is new is the incredible speed of change. Industries, companies and careers have gone from ‘distinction’ to ‘extinction’ because of their inability to adapt, adjust and master change.”

Serving as a consultant to the Coca Cola Corp., Blumenthal recalled company discussions about whether or not to enter the bottled water market. The beverage company eventually decided to start bottling water, but there was a group in the company that launched a H2O campaign. Coke has enjoyed significant success selling bottled water. Additionally, he explained how Kentucky Fried Chicken rebranded its name to KFC and eliminated the word “fried” from its name. He used

idea. It’s what you do with it Monday morning.

“The one rule in business is that there are no rules,” Blumenthal said. “Great businesses that embrace change must focus. Compare this to ALTA’s Best Practices. Committing to seven pillars of best practices is easy. You need to have a business plan focused on logical and likely changes in industry. View risks differently. Ask yourself ‘What’s the risk I take if I don’t do something?’ You have a greater risk if you don’t raise the bar.”

“You have to be smarter and swifter and raise the bar or business will pass you by. It’s that simple.”

Howard Johnson’s as an example of a company that did not adapt. The chain had about 2,000 stores at one time and now only has around 50.

“You have to be smarter and swifter and raise the bar or business will pass you by. It’s that simple,” Blumenthal said. “People become paralyzed by their paradigms. If you want to grow, you need to be a paradigm pioneer.”

Due to the fallout from the financial crisis, challenges of the Dodd-Frank Act, consolidation and cyber theft, among other factors, the industry is responding to a great amount of change that will result in fundamental shifts in the legislative and regulatory landscape. Blumenthal said attending conferences such as ALTA’s Business Strategies Conference is a great place to find ideas for new strategies. But it doesn’t end there. Attending a conference is just the first step. The key is not the

Lenders: ALTA’s Best Practices Can Help Title Agents Thrive

Opening the general session on the final day of the conference, a panel of experts addressed why lenders are adjusting business relationships to reduce settlement risk and how implementing ALTA’s Best Practices can help title professionals succeed in the marketplace.

Penny Reed of Wells Fargo Home Mortgage and Linda Elkins of BancFirst Corp. talked about the importance of having a network of settlement agents because of their local knowledge and the important role they play in closing transactions.

“We see what you do as an extension of ourselves,” Reed told attendees. “Many times, the settlement agents are the only people who see our customer face to face. The originator may only talk to the consumer on the phone. That’s one

of the big values we see from the settlement services industry.”

Elkins said she views the settlement agent as an extension of the customer service her company provides. She indicated a BancFirst representative attends about 25 percent of their closings. This means settlement agents oversee the majority of the transactions, and are the ones on the front line managing lenders’ reputational risk.

“Our customer sees you as the one explaining, going over charges and distributing their money, and if that doesn’t go well, it’s a direct reflection on our company,” Elkins said. “There is high risk there. We go through periods of going back through and approving new title companies.

There’s risk if we don’t make good judgment calls on who is on our list.”

Reputational risk has been a large issue for lenders for some time. While a settlement agent may have hundreds of open files, if there’s a security breach the headline will be “Wells Fargo’s data stolen,” even if only a couple of the files were deals involving the lender.

“From our internal perspective, protection of NPI scares us the most,” Reed said. “Regulators are pressuring us to look closer and take more steps to monitor the money and financial information. Our answer to regulators can’t be ‘nothing has gone wrong so far.’”

Fiduciary responsibility is a concern for Elkins as well. This is where ALTA’s Best Practices can help provide guidance. The Best Practices outlines policies and procedures that should be followed to protect NPI.

“When I was looking at the Best Practices, it brought to light that I’m not sure what security our vendors have in place to protect our

customers’ personal information,” she added. “The Best Practices showed me that there are things we need to examine.”

To protect NPI, Reed said attendees should lock offices, have strong passwords, encrypt computers and use cable locks on laptops.

Digging into protection of NPI, an attendee asked why settlement agents are given borrowers’ personal tax returns to be signed at closing and whether this process should be revisited.

“We are looking at it,” Reed said. “We want to be careful that if we stop doing this, we must make sure we don’t break another process we didn’t know existed.”

Elkins added that because lenders don’t have one-on-one relationships with borrowers, settlement agents have become the central signing repository.

Another attendee stated that title and settlement agents are in a tough time right now. The concern is that there’s a tidal wave of regulation hitting the lenders, which in turn passes on regulatory compliance to small agents.

“This is an ongoing process,” Reed said. “We are still working through it and it will be a while before we work out the tweaks.”

Strategies to Protect Against Cyber Threats

Closing out the final general session at ALTA’s 2013 Business Strategies Conference, Doug Johnson of the American Bankers Association shared information on emerging scams and tips to thwart cyber crime during the presentation titled “The Latest Fraud Tricks: Protect Consumers, Customers and Your Business.”

To avoid liability under article four of the Uniform Commercial Code, which addresses funds transfer, Johnson said financial institutions must offer a “commercially reasonable security procedure.”

Commercially reasonableness is determined by:

- The wishes of the customer, expressed to the financial institution
- Size, type and frequency of payments made by customers
- Security procedures in general use by financial institutions and customers similarly situated

Johnson explained that if a hacker used a SQL injection attack (a technique often used to attack data-driven applications) and obtained the customer’s log-in credentials from the bank, then a court would likely find the bank liable. However, if a hacker used a phishing scam, and obtained the relevant data by spoofing the customer, a court could well find the bank is not liable for the loss. Meanwhile, if a bank’s security system was so lax it made it easy for the hacker to phish for customer information, a court could conclude that the bank had not implemented commercially reasonable security procedures—rendering it liable.

“You can outsource the function but you can’t outsource the obligation,” Johnson said.

Johnson encouraged attendees to push back to the financial institution if they don’t think the lender is providing the appropriate amount of security. He then asked what strategies attendees had implemented to protect NPI.

“ALTA’s Best Practices really tries to address the need to educate individual employees about the importance of securing personal information,” Johnson said. ■

2013 Business Strategies Conference Photos

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FDIC Launches National Program to Reserve Mineral Rights

Agents Encouraged to Read Closing Instructions Carefully and Ensure Exceptions Raised for Such a Reservation in New Policies

In April, the Federal Deposit Insurance Corporation (FDIC) launched a national program reserving mineral rights—including oil and gas—in any land it conveys across the country.

The program covers all property (residential and commercial) sold by the FDIC with limited exceptions for properties worth less than \$50,000 and individual condominium units. The program will apply to condominiums under development. This reservation is already in some current contracts, according to the FDIC.

The reservation of minerals will be included as an addendum to the typical FDIC sales contract. FDIC's instructions will require that a similar reservation be included in the deed at closing. For these transactions, the FDIC has developed special warranty deed forms.

One form reserves mineral interests that include the right to control surface access. This special warranty deed would be used in rural areas.

This would allow the FDIC to maximize leasing opportunities to deal directly with drilling companies on well sites in larger land properties. The second special warranty deed excludes the right to control surface access in incorporated cities. This deed will be utilized when it is determined that the property is in an incorporated city that may have restrictions and the land size is not large enough for drilling locations away from improvements.

At this time, the FDIC does not expect the title industry to do anything different than it does today. This includes using the FDIC's sales contract to lay out the information in Schedule A and excluding mineral rights in Schedule B. However, Marjorie Bardwell, director of underwriting services for Fidelity National Title Group, said closing and escrow departments should be aware of a couple of items.

“Depending upon who drafts the deed locally, there must be immediate awareness of this new requirement for

the added reservation in the deed,” she said. “On the title side, we must be sensitive to the fact that deeds will be found in the chain of title in areas that have had no serious mineral rights activity, especially in urban areas.”

Additionally, title and settlement agents must ensure the new requirement isn't missed in the closing instructions so the appropriate exceptions can be raised on policies issued after closing. If general exceptions are already raised in a particular state, Bardwell suggests making sure they are broad enough to cover these reservations.

“In many areas of the country you may not have seen such rights reserved, especially for residential property,” she added.

A special price must be negotiated if a buyer wishes to purchase the mineral rights from the FDIC. In these situations, a contingency will be added to the sale contract pending those negotiations. These discussions have the potential to delay closings because the mineral rights' valuation process can take up to three weeks.

In a white paper explaining its plans to initiate the reservation of minerals rights, the FDIC said the failure to reserve mineral interests on most owned real estate properties “means missed opportunities for an added return to the Receivership through lease bonuses, production, and the subsequent liquidation of these mineral interests.”

Recent Large Lease or Mineral Income Completed in 2011 through June 2012 by the FDIC

- Anadarko Petroleum paid FDIC \$1,024,000 in 2011 on 640 net mineral acres (NMA) in Adams County, Colo., from a mineral reservation from Silverado Banking, Savings and Loan Association, Denver, which failed in 1988
- The FDIC was paid \$130,000 in 2012 from a FirstTier Bank mineral interest reservation in 2008 on 141.8/NMA in Larimer County, Colo.
- Seneca Resources paid FDIC \$300,000 in 2011 from a mineral reservation by Coudersport Trust Co., Coudersport, Pa., on 111.95/NMA from 1937
- Venoco paid the FDIC \$76,240 in 2010 and 2011, with \$114,360 lease bonus to be collected over the next three years, from a reservation by United States National Bank, who reserved minerals in 1980 in Kern County, Calif., on 818.3/NMA
- EnergyNet.com sales 2012– San Joaquin Basin, Leased Minerals Rights 157.50/NMA – Kern County, Calif., \$113,400
- EnergyNet.com sales 2012 – San Joaquin Basin, Leased Mineral Rights 319.00/NMA – Kern County, Calif., \$236,250
- EnergyNet.com sales 2011– Strawn Basin – Barnett Shale Non-Producing Minerals 107.663/NMA – Tarrant County, Texas \$745,500
- EnergyNet.com sales – 1Q 2010 – Lowell Williams 4H & 6H (Royalty Interest) Hill County, Texas \$975,000

“Landmen will likely continue to find mineral rights from past failed institutions to which FDIC owns interest,” the FDIC said in the white paper. “If mineral rights are reserved, then like any other rightful party, FDIC should exercise its right and title. It is in the best interest of FDIC, and consistent with its mission, to institute these changes.”

During the recent energy exploration boom, the FDIC’s Division of Resolutions and Receiverships Owned Real Estate received income from discovered mineral interests reserved by U.S. banks that failed as many as 75 years ago. The FDIC reported a

majority of mineral interest inventory is corporately owned since the reservation and the receivership was more than 15 years old when discovered.

Since 2010, the FDIC has received income from mineral interests in states such as California, Colorado, Louisiana, Oklahoma, Texas and Pennsylvania, when it was discovered that failed banks had made mineral reservations in areas where drilling was found to be advantageous. The FDIC sells all types of mineral interests through its online auction contractor, EnergyNet Inc.

Beyond the reservation of mineral rights, the FDIC also reserves the

right to ingress and egress, as well as the right to remove the minerals and enter into leases or other sale agreements for rural properties (not in an incorporated city).

If drilling occurs, the surface owner will be able to negotiate a settlement to have the surface remediated after production of minerals is completed. For urban properties, these extra rights will be specifically negotiated with the buyer when and if a producer wishes to attempt to develop the minerals.

According to the FDIC, no rules or lender restrictions currently exist for sellers retaining mineral rights on real estate properties sold. However, certain states require borrowers to receive permission from their mortgage lender before signing a lease of their mineral rights. Upstate New York now requires gas companies to agree to pay for damage caused by drilling that may lead to devaluation of its mortgaged properties. In its white paper, the FDIC reported that many times the cost of restoration greatly exceeds the value of the land.

“Under the market value rule, however, property damages can never exceed the fair market value,” the white paper said. “For instance, restoration of the land after strip mining coal or lignite will exceed the value of the land prior to operations. In addition to loss of market value, another recovery, known as punitive damages, may be obtained in certain circumstances. A growing concern for lenders exists regarding leases, allowing drillers to conduct operations that may violate the landowner’s mortgage.” ■



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Pacific Northwest Title Companies Join Forces

Two of the largest independent regional title and escrow companies in the Pacific Northwest are joining forces. Idaho-based Futura Title & Escrow, the parent company of Alliance Title & Escrow Corp., completed the purchase of AmeriTitle, Inc., which has corporate offices in Bend, Ore.

Combined, the companies employ more than 600 title and escrow professionals and have 73 offices operating in five states. The companies will maintain their separate brand identities.

"This is an ideal combination of two great regional companies," said Larry Matney, chief executive officer of Futura Title & Escrow. "Our operations are very compatible and our customers and employees will benefit greatly from the geographical coverage, scale and service capabilities of the new organization."

AmeriTitle founder and President Linda Stelle will remain in her current position.



"As we considered the sale of our company, it was important to align with a parent company that was as deeply committed to the Pacific Northwest as we are," Stelle said. "As always, service with commitment to our local communities and customers will be among our highest priorities at AmeriTitle."

AmeriTitle and Alliance offer title, escrow, 1031 facilitations and long-term escrow processing throughout the Pacific Northwest, including Idaho, Oregon, Washington, Montana and Wyoming.

The sale of AmeriTitle is part of a strategy by its previous owner JELD-WEN to focus on its core manufacturing business. The company has owned AmeriTitle for 28 years. Futura Corp. acquired Alliance Title & Escrow in 1995.

Partnership Provides Electronic Closing Documents to Clients

Pioneer Technology Group, developers of YourDox online homebuyer document delivery and archiving system, has partnered and integrated with GreenFolders' electronic office management system.

Title and escrow companies processing transactions electronically via GreenFolders are now able to deliver secure, electronic closing documents to their clients.

"GreenFolders is committed to improving the closing process by eliminating the use of paper. Through our partnership with Pioneer Technologies, we are further advancing this commitment," said Mike Kirby of GreenFolders. "With the addition

of YourDox on the GreenFolders platform, our users can improve customer service and security by providing their customers with convenient online access to their closing documents."

According to a release, the companies said this integrated solution reduces the expense and potential risks associated with handling and storing paper closing documents. The platform also provides homeowners with ongoing document storage, strengthening the long-term relationship between the consumer, the title agent and the real-estate team.

Users of GreenFolders Version 3.4 or newer will have access to YourDox.

Title Search Firm Integrates With Title Production Software

Adeptive announced that A.S.K. Services, a Midwestern title search firm, is now integrated with ResWare. Clients of ResWare may now

place orders with A.S.K. and receive search results directly back into ResWare, customized to the requirements of their title production process.

Credit Unions Provide Insurance Coverage for Escrow Accounts

While the FDIC coverage on trust accounts reverted back to \$250,000 after the Transaction Account Guarantee (TAG) program was not extended at the end of 2012, title professionals should note they can also get coverage on escrow accounts held at credit unions.

According to Michael McKenna, the general counsel for the National Credit Union Administration, generally speaking, FDIC coverage and the insurance program for credit unions are kept as similar as possible.

The National Credit Union Insurance Fund is the federal fund created by Congress in 1970 to insure members' deposits in federally insured credit unions. In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act permanently established the National Credit Union Administration's standard maximum share insurance amount at \$250,000.

McKenna said the difference in coverage between an FDIC-lending institution and a credit union is that a depositor must be a member of the credit union to get insurance coverage on



an account. So take an example in which a title company is holding money in escrow for 100 people, and 60 of these consumers are members and 40 are not. The 60 would get the same pass-through coverage they would get at an FDIC-insured bank. Each member would be insured up to \$250,000. The 40 non-members would not be entitled to the full \$250,000 coverage. All their money would be lumped together and insured for a total of \$250,000.

To find a specific credit union, go to <http://researchcu.ncua.gov/Views/FindCreditUnions.aspx>.

To verify if a lender is FDIC-insured, visit <http://www2.fdic.gov/IDASP/main.asp>.

As a reminder, the FDIC permits pass-through deposit insurance on properly structured escrow accounts. This means the insurance passes through the escrow agent to the owner(s) of the funds if certain requirements are met. These include:

1. *The fiduciary status of the accountholder must be clearly stated in the depository institution's account records. To satisfy this requirement each escrow account opened at a bank (or other insured institution) must be named in the bank's records as "_____ Title Company, as Escrow Agent", "_____ Title Company Escrow Account", "_____, Attorney at Law, Trust Account", or the like, which makes clear the named company or depositor is acting as a fiduciary for others who are actual owners of the account funds.*

2. *The identity of the actual owners of the account funds, and their respective interests in the funds, must be ascertainable either (a) from the bank's account records or (b) from records maintained by the escrow agent in its regular course of business. To satisfy this requirement, the escrow agent can include the names of the actual owners of the account, a reference to the particular file number and the dollar amount or percentage interest belonging to each owner*

at the time it opens the account so that this information appears in the bank's records. On the other hand, if this is impractical (i.e., the owners are too numerous and/or constantly changing such as for a general escrow account covering many files and closings) the escrow agent must open and name the account in accordance with the first requirement set forth above and then must meticulously keep its own records as to keep each escrow account up-to-date with the owners' names and the amount of account funds belonging to each. This is something all associates should be doing in any event but everyone needs to remind all to be diligent in following these practices.

The account funds must actually belong to the owners named in either the bank's or the escrow agent's records. This final requirement is a factual matter that depends upon the specific facts and circumstances of the transaction for which the particular escrow account was established.

MERS Prevails in Two Federal Appeals Cases

In February, a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit twice ruled in favor of Mortgage Electronic Registration Systems, Inc. (MERS) and other defendants, affirming a lower-court decisions that rejected Minnesota-based attorney William B. Butler's arguments regarding the defendants' right to foreclose.

In *Karnatcheva v. JPMorgan Chase Bank* and *Peterson v. CitiMortgage*, Butler represented groups of borrowers who, stating numerous claims, alleged their mortgages were invalid and the defendants lacked authority to foreclose.

In *Karnatcheva*, Senior Circuit Court Judge Morris S. Arnold—joined by Judges Diana E. Murphy and Steven M. Colleton—affirmed a district court ruling

that found the borrowers' allegations “conclusory” and “unsupported by the facts.” According to MERSCORP Holdings, the panel rejected each claim, noting that the borrowers' theories had previously been rejected by the Minnesota Supreme Court in *Jackson v. Mortgage Electronic Registration Systems*.

In *Peterson*, the same three-judge appellate panel also found for MERS and the other defendants. “This is the latest in a string of substantially similar cases brought recently in Minnesota,” Judge Arnold wrote. Citing *Butler v. Bank of America* in which the court characterized similar claims by Butler as “borderline frivolous,” the panel concluded that “recent precedents require a quick rejection of most of the claims advanced in this case.”

Title Source Expands California Footprint

Title Source has expanded its presence in California, and is now licensed to write title insurance policies in all 58 counties in the state. This is in addition to Title Source's current presence in California,

where the company has been providing escrow and closing services since 2004. Nearly \$1.7 billion in title insurance premiums were generated in the state in 2012, which was up 25 percent compared to 2011.

Texas Approves First Rate Increase in More Than 20 Years

The Texas Land Title Association (TLTA) reported last week that the Texas Department of Insurance (TDI) approved a 3.8-percent increase to the basic premium rate for title insurance.

This marks the first rate increase in Texas in more than 20 years. The new rates, which were approved by TDI Commissioner Eleanor Kitzman, go into effect May 1, 2013.

Several public meetings were held following a rate hearing last year. The TLTA, Office of Public Insurance Counsel (OPIC) and TDI staff discussed and analyzed various rate recommendations and considerations. In a final public hearing in February, each group and their expert

witnesses presented brief summary testimony. The TLTA placed into record exhibits that included a joint recommendation from TLTA and OPIC for the 3.8 percent increase. OPIC also testified that the proposed rate adjustment was reasonable, and the TDI staff actuary said it was reasonable and within their range of recommended rate changes.

Originally, TLTA proposed a 6.5-percent increase to the basic premium rates. The TDI staff proposed an increase of rates up to 4 percent. The OPIC proposal ranged from a 5.3-percent decrease to a 3.8-percent increase.

Stewart Lender Services Partners with Mortgage Law Firm

Residential mortgage law firm Butler & Hosch, P.A. and Stewart Lender Services, a wholly owned subsidiary of Stewart Title Company, have partnered to offer an expanded platform for nationwide REO title curative and settlement services.

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settlement clients will continue to work directly with a single point of contact at the firm. Clients will have access to Stewart's extensive array of title curative talent and underwriting expertise to assist with the disposition of their REO assets.

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Getting Involved Illuminates Efforts of ALTA

As I'm sure it has been for many ALTA members, implementation of ALTA's Best Practices has been a focal point at my company. To learn more about what my company should be doing, I attended ALTA's Business Strategies Conference in Oklahoma City.

Overall, the conference was very informative. Every time I heard a presentation on a different pillar of the Best Practices, something new jumped out at me. As a small agent in Kansas, I value the information ALTA provides to help me meet lender demands and differentiate myself in the market. I especially appreciate being kept up to date and informed about the new closing disclosure statements that the Consumer Financial Protection Bureau is developing. With the Bureau expected to finalize its rule and forms in September, it's important for me to know how this will affect closings at my company.

Serving as president of the Kansas Land Title Association this year, I've come to realize how much ALTA does on behalf of its members. Yes, it could be due to the many changes and challenges our industry faces today, but it may also be a result of becoming more involved and attending the meetings when possible. Whether it's on the federal level or working with state land title associations, ALTA is engaged and willing to help on any level. The level of activity may be due to the changes and challenges our industry faces today, but by becoming more involved and taking action, I've become more attuned to everything that could impact our livelihood.

Here are three recent examples of ALTA's effort to promote the industry and the important role ALTA members provide in the real estate transaction. Just last month, ALTA President Frank Pellegrini met with Richard Cordray, director of the Consumer Financial Protection Bureau, for the second time in the past six months to address industry best practices and the Bureau's efforts to create new mortgage disclosures.

Additionally, ALTA staff and members presented at the National Association of Insurance Commissioners' spring meeting. ALTA shared information about the association's Best Practices, title search practices and how underwriters evaluate potential agents.

ALTA's advocacy team also is keeping watch of Congress' tax reform efforts. The House Committee on Ways and Means is working behind the scenes to develop a blueprint for future tax reform proposals. Section 1031 is being considered as part of this broader capital gains review. Changes here could significantly affect 1031 exchange business.

Remember, being a member of an association is just the first step of involvement. As you renew your ALTA membership, consider joining a committee, attending a conference or joining the Title Action Network (www.titleactionnetwork.com). The more deeply you are involved, the more you will truly value your association membership. Thank you to all who work so diligently for our industry!



- Karen Panter, president of the Kansas Land Title Association



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