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American Land Title Association

TitleNews



Consumer Financial
Protection Bureau

Going Retro With RESPA

Compliance Is Always Vogue,
So It's Important to Understand
Key Regulations and Trends
in Enforcement

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2016 ALTA CONFERENCES

March 16	Social Media Summit Indianapolis, IN
March 16-18	Business Strategies Conference Indianapolis, IN
May 16-18	Federal Conference & Lobby Day Washington, DC
October 4-7	Annual Convention Scottsdale, AZ

STATE CONFERENCES

December 4 - 6	Louisiana New Orleans, LA
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Look at What You're Missing in this month's Digital Issue



Highlights from ALTA's 2015 Annual Convention

The digital edition includes a slideshow of additional photos from ALTA's 2015 Annual Convention, as well as recordings of the general sessions.

Go to www.alta.org to get your copy of Digital TitleNews Today!

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Are You Up to the Challenge?

It's the end of the year and I can't resist writing about the changes we have seen in the past year and a bit about making plans for 2016 and beyond. (Regular readers know I like making a plan and executing that plan.)

The changes I see when looking back on 2015 aren't necessarily ones that just started over the last year. What I see are subtle changes in our culture and the way we do business. Business has always been about the consumer, but now, it seems to be about the consumer in a different way. It may be the result of our economy shifting from a manufacturing economy to a service economy to the current shift to an experience economy. In any case, consumers are demanding more transparency. Their expectations are often based on the experience they have with unrelated businesses.

Maybe you've noticed the new ad campaign by Domino's. The company has invested heavily in emojis (digital hieroglyphics) to revolutionize its pizza-ordering process. Customers can now place an order by tweeting a pizza emoji. While using an emoji to place a title order seems far-fetched, the concept of modifying behavior to meet customer expectations should not be ignored. That fact is—fair or not—consumers will take things from one industry and apply it to others.

Think about how you differentiate your business. Delivering quality service to consumers and meeting their needs will only enhance relationships with lenders and real estate agents, who will seek out title professionals that make their transactions more positive.

Market disrupters such as technology change the way companies approach marketing their products and services. An area where companies should have less fear of regulatory repercussions is marketing their products and services directly to the consumer. Certainly, lenders and real estate agents influence consumer selection of settlement service providers, however, a more informed consumer makes for a better marketplace.

Not only do consumer expectations change, regulatory requirements evolve as well. We're seeing this through recent enforcement activity. This edition's cover article details recent regulatory actions and distills what they mean to the industry. As always, we encourage our members to consistently review their practices to ensure they comply with legal requirements.

What does all of the consumer and compliance change mean? It means you need to make sure your company is easy to work with and transparent in its business practices. Understand your customers. Know how they want to interact and what makes them feel valued.

Putting the priority on delivering information and value to the homebuyer is a solid plan for 2016, or any year.



A handwritten signature in black ink that reads "Michelle Korsmo". The signature is fluid and cursive, with a large, sweeping flourish at the end.

— Michelle Korsmo, ALTA chief executive officer

ALTA Launches New Health Insurance Program for Members

ALTA is now offering a new health insurance program that brings innovative employee benefit solutions to firms in the land title industry through its partnership with Arthur J. Gallagher & Co. (Gallagher).

“We’re focused on producing truly innovative options for our members,” said ALTA Chief Executive Officer Michelle Korsmo. “We believe Gallagher’s solutions and strategic consulting capabilities will enable us to provide our members with further added-value and remedies for a common challenge they contend with.”

The program has been developed to offer benefit solutions with cost-saving opportunities that incorporate unique offerings designed exclusively for ALTA members. Many participating companies will have the opportunity to achieve cost savings on their health and welfare benefit coverage.

“Increasing health insurance premiums have been a challenge for almost every one of our

members for many years. The enactment of the Affordable Healthcare Act has made it even more difficult for many of them to manage this expense,” Korsmo said. “We chose to partner with Gallagher because of their national presence, experience with affinity programs and distinct ability to develop strategies to specifically address our members’ needs in the benefits arena.”

By leveraging the collective buying power of ALTA’s more than 6,000 member companies and the strength of Gallagher’s expertise and relationships, ALTA will be able to offer custom solutions for small-to-mid-market firms, which describes the vast majority of ALTA’s member companies.

The program, which is a member benefit for companies with less than 250 employees, currently has three different elements, which are designed to address a number of employee benefit challenges, depending on a company’s situation:

- *ALTA Advantage Health: Group Health insurance program for member companies with 10 or more employees.*
- *ALTA Advantage Benefits: Group Dental, Life and Disability insurance for member companies with 10 or more employees.*
- *ALTA Advantage Marketplace: Group and Individual insurance product support and enrollment for member companies with one to nine employees.*

“This new relationship is very exciting for us because of ALTA’s well-established leadership in the title industry,” said Ethan Hendrickx, area vice president of Gallagher Benefit Services,



Ohio branch. “ALTA’s commitment to bringing value to its members creates an opportunity to provide the needed solutions using an approach made possible by partnering with ALTA.”

Individuals and companies in the land title industry interested in this program should contact Cornelia Horner, ALTA’s chief operating officer, at 202-261-2941 or chorner@alta.org.

ALTA to Offer Compliance Webinar Series in 2016

One of ALTA’s priorities is to continue to provide education to members on regulatory enforcement actions, legal opinions and other directives on legal and regulatory compliance. To help with this, ALTA will offer a Compliance Webinar Series in 2016.

One webinar will be held each quarter on topics including the Real Estate Settlement Procedures Act, unfair and deceptive practices and the Gramm Leach Bliley Act.

Watch for more information on ALTA’s website at www.alta.org and in *TitleNews Online*.

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ALTA has partnered with InterCall to provide members special rates for audio and web conferencing. InterCall is the world's largest conferencing services provider and is consistently noted by industry experts as a market leader.

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To purchase the 4-Pack, go to www.alta.org/PortalTools/meetings/index.cfm and select "4-Pack Special."

House Approves Amendment Limiting G-fee Use for Highway Bill

The House on Nov. 5 overwhelmingly passed an ALTA-supported amendment that would bar the use of Fannie Mae and Freddie Mac credit guaranty fees and a Federal Reserve bank stock dividend cut as funding sources for a highway spending authorization bill.

ALTA and other trade groups sent a letter to House leadership saying that the purpose of these fees is to prospectively guard against credit losses at Fannie Mae and Freddie Mac. The letter said g-fees should only be used to protect taxpayers from mortgage losses, and not to fund unrelated spending. Each time g-fees are extended, increased and diverted for unrelated

spending, homeowners are charged more for their mortgages and taxpayers are exposed to additional risk for the long-term.

The House then overwhelmingly approved a multiyear highway bill that includes more than \$300 billion in transportation and infrastructure programs to address the nation's deteriorating roads and bridges. The House measure must now be reconciled with a Senate version adopted earlier this year.



ALTA 2016 Major Meetings:

Social Media Summit

March 16, 2016

JW Marriott Indianapolis • Indianapolis, Ind.

Business Strategies Conference

March 16-18, 2016

JW Marriott Indianapolis • Indianapolis, Ind.

Federal Conference and Lobby Day

May 16-18, 2016

Renaissance Downtown • Washington, D.C.

110th Annual Convention

Oct. 4-7, 2016

Fairmont Scottsdale Princess • Scottsdale, Ariz.

For more information, go to www.alta.org/meetings.

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12 Days of Title Begins December 11

For 12 days each December, ALTA posts some of the top reasons why our industry is one of the best in real estate. As we reflect on another year gone by, we use [#12DaysOfTitle](#) to celebrate accomplishments, remember the past and plan for the future. Be sure to check out our Facebook page (facebook.com/altaonline) and Twitter account ([@ALTAonline](https://twitter.com/ALTAonline)) to participate this year. If you have an accomplishment or memory that you would like us to include for [#12DaysOfTitle](#), please email social@alta.org.

Social Media Pro-Tip: Reach Homebuyers with Social Media

If you're looking to connect with consumers and educate them about the benefits of title insurance, make sure to utilize content already developed by ALTA. Social media content for various platforms is available exclusively to ALTA members. According to a PEW research study, 77% of adults in the United States use some sort of social media platform. Make sure that you're taking advantage of every possible opportunity to increase your

market share by communicating directly with homebuyers today. ALTA's new Homebuyer Outreach Program has all the tools you need to effectively communicate the benefits of title insurance to consumers on multiple social media platforms. To view the content, go to www.alta.org/homebuyer and look under the Digital Marketing Resources section.



Refresher on Social Media Compliance

While social media is a powerful networking tool, there are rules. Check out a recorded webinar as experts from the FDIC and Federal Reserve System offer best practices for social media compliance. To watch our webinar, go to www.youtube.altavideos. Under "Playlists," select "Title Topics." Then, look for the presentation titled "Social Media Best Practices: The Nitty Gritty of Compliance."

Save The Date: SMS is March 16 in Indianapolis

We are now less than four months away from the 2016 ALTA Social Media Summit. Mark your calendar now as this year's SMS will be held on Wednesday, March 16, at the JW Marriott in Indianapolis before ALTA's Business Strategies Conference. For more information, visit www.alta.org/socialsummit for more information, including how to register.

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Going Retro With RESPA

Compliance Is Always Vogue, So
It's Important to Understand Key
Regulations and Trends
in Enforcement

Some have called compliance the “new black.” That may be partially correct, but complying with laws and regulations has never gone out of style. What has changed, though, is the lens through which regulators are using to interpret compliance. With the Consumer Financial Protection Bureau on the beat, regulators are laser-focused on the consumer experience. >>

By Jeremy Yohe



Consumer Financial
Protection Bureau

Distributed by RESPA Section 8(c)(2), Section 8(c)(3), Section 8(c)(4)

“The CFPB has taken a strategic approach on their enforcement actions,” said Michelle Korsmo, ALTA’s chief executive officer. “They’ve taken a blend of different products and services offered by large and small companies. When you analyze each case, the key question is whether the bureau believed the consumer was harmed in some way. Enforcement will continue and will target settlement agents and transactions with lenders. It’s prudent that title and settlement agents continue to pay attention to regulators’ interpretations of regulations.”

To understand how the CFPB and other regulators are viewing compliance, there needs to be historical comprehension of the laws and regulations that govern the industry.

RESPA 101

More than two decades before the Real Estate Settlement Procedures Act (RESPA) was passed, Congress directed the U.S. Department of Housing and Urban Development (HUD) and the Department of Veterans Affairs to study and make recommendations on ways to reduce and standardize the costs borrowers paid for settlement fees.

In 1972, the joint HUD/VA report alleged there was a lack of competition among settlement service providers and that charges were inflated due to kickbacks and referral fees.

The report recommended that Congress allow HUD and the VA to prescribe maximum allowable settlement charges. HUD proposed charges for six settlement items in six metropolitan areas—with an intention of rolling out equivalent rates nationally—but Congress ultimately

decided to indirectly regulate rates by targeting business relationships.

According to Senate Report No. 93-866 from 1974, most borrowers did not shop for their settlement service providers. Instead, borrowers were referred to title insurance companies and other settlement service providers by real estate brokers, closing attorneys and other professionals. With the 1974 passage of RESPA, Congress

“It’s prudent that title and settlement agents continue to pay attention to regulators’ interpretations of regulations.”

opted for a statute designed to provide for more “advance disclosure to home buyers and sellers of settlement costs” and eliminate “kickbacks or referral fees” that can drive up settlement costs.

RESPA applies to “federally related” mortgage loans that are secured by a lien on residential real estate designated principally for the occupancy of from one to four families. Section 8 of RESPA spells out what is not allowed. Specifically, Section 8(a) says:

No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

In addition, Section 8(b) says:

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real

estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

Meanwhile, Section 8(c) outlines permissible conduct identified as acceptable.

- “payment of a fee” to attorneys, title company agents, or lender agents “for services actually performed” (Section 8(c)(1))

- “payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed” (Section 8(c)(2))
- “payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers” (Section 8(c)(3))
- affiliated business arrangements “so long as [safe harbor requirements are satisfied]” (Section 8(c)(4))

Under Section 8(c)(2), RESPA allows payments for goods and/or services that are actual, necessary and distinct. The payment also must be commensurate with the value of goods and/or services. A Section 8 violation may result in civil and/or criminal liability, including a fine of up to \$10,000, imprisonment of up to one year and civil liability of up to three times the amount paid for the settlement service at issue.

Marketing Services Agreements

Over the past few years, new regulatory requirements including higher net worth standards for mortgage banking operations and the inclusion of affiliate fees in the points and fees test for qualified mortgages have made affiliated business arrangements (AfBAs) less appealing, according to Phil Schulman of the law firm K&L Gates.

As the appetite for AfBAs waned, interest in marketing services agreements (MSAs) grew. In typical MSAs, a settlement service provider, such as a mortgage company, typically engages another settlement service provider, such as a title company, to perform general marketing services in exchange for periodic fixed fees that are not directly based on volume of business. These services may include website banner advertisements, physical signage, and inclusion of mortgage company logos and marks on publications and other resources, to name a few. Fees generally are structured to compensate the service provider only for those marketing and advertising services actually performed. There are flat-fee and per-transaction agreements.

Companies entering into these agreements over the past few years have been guided by a 2010 interpretive rule issued by HUD. In the rule, Schulman said HUD confirmed that Section 8(c)(2) of RESPA permits a person to pay another person in a position to refer settlement service business for the performance of general marketing and advertising services that do not involve direct-to-consumer solicitations, as long as the payment for the marketing services is fair market value for the actual services performed.

According to HUD's 2010 rule, paying a referral fee is permissible:

- to an attorney for services actually performed
- by a title company to its duly appointed title agent for services performed in issuance of a title policy
- by a lender to its duly appointed agent
- under cooperative agreements between listing and selling agents
- employer to employee
- for secondary market transactions
- under AfBAs
- for services rendered or goods/facilities actually provided under Section 8(c)(2)

New Cop, New View

The same year HUD issued its rule, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) established the CFPB. With the bureau's main goals of "protecting the consumer and bringing supervision and accountability to the financial services industry, the regulatory landscape was primed for a significant change. While Dodd-Frank does not give the CFPB authority to examine or supervise the business of insurance, it does give the bureau power to write regulations and enforce federal consumer financial laws such as RESPA.

In 2014—40 years after passage of the statute—the CFPB made its mark on RESPA enforcement against the title industry in three direct actions against title companies. The consent orders and fines involving TitleSouth, Stonebridge Title Services and Lighthouse Title were in connection with alleged RESPA violations for affiliated business arrangement disclosures, payment of referral fees and marketing service

agreements (MSAs), respectively. The consent orders announced by the CFPB in January 2015 highlight the role Genuine Title allegedly played in violations of RESPA related to marketing services and commission payments.

"While there has been considerable analysis and debate of CFPB's interpretation of RESPA, there is no question as to CFPB's intent to establish itself in the enforcement arena," the law firm Carlton Fields Jordan Burt wrote in a brief.

Over the past year, it's been MSAs that have prompted the bureau to sharpen its enforcement teeth. Setting the stage was a consent order the CFPB reached with Lighthouse Title, fining the title company \$200,000 over referrals derived from MSAs. According to the CFPB the agreements made it appear as if the payments would be based on marketing services the companies were supposed to provide to Lighthouse Title. However, the CFPB found that the title agency was setting the fees it would pay under the MSAs, in part, by considering the number of referrals it received or expected to receive from each company.

Bob Wuerfel, president of Lighthouse Title, said his company strived to be compliant by using underwriter-provided forms, soliciting advice from a RESPA compliance firm and operating under the 2010 definition of MSAs provided by HUD. The title agency terminated its remaining agreements in June 2014. The title agency had sought a definition of an MSA over the years, but the CFPB did not provide an explanation until the settlement. Additionally, Wuerfel said his company remitted HUD-1 Settlement Statements from several years.

“They were looking to see if the fees charged for closings with non-MSAs clients were the same as with clients with MSAs,” Wuerfel said. “In our case, they were the same regardless, as it should be. There was no extra cost to the consumer.”

Many have said this was the proverbial shot across the bow as the consent order offered the first glimpse into the CFPB’s concerns regarding methods used in determining payments under MSAs (*See Review of RESPA Enforcement Actions and Key Takeaways on page 16*).

CFPB Issues Guidance, Sort Of

After a handful of other enforcement actions, the bureau in October released its much-anticipated guidance on MSAs and compliance with the RESPA. The CFPB bulletin reminded “participants in the mortgage industry of the prohibition on kickbacks and referral fees” and described “the substantial risks posed by entering into (MSAs).” It indicated that “while (MSAs) are usually framed as payments for advertising or promotional services, in some cases the payments are actually disguised compensation for referrals.” The CFPB also suggested that the “steering incentives that are inherent in many MSAs are clear enough to create tangible legal and regulatory risks for the monitoring and administration of such agreements.”

In short, the CFPB’s bulletin warns that “any agreement that entails exchanging a thing of value for referrals of settlement service business involving a federally related mortgage loan likely violates RESPA, whether or not an MSA or some related arrangement is part of the transaction.” While not stating that MSAs are per se illegal—a fact confirmed by public

statements by senior CFPB staff—the bulletin identifies “substantial legal and regulatory risk” for parties to an MSA and voices “grave concerns” about the use of MSAs that may evade RESPA requirements.

“Clearly, the CFPB is making its case against MSAs,” said Tim Kemp, partner of the law firm Locke Lord. “They do not like them. And, they intend to continue scrutinizing MSAs through their examination and supervisory functions.”

Companies that have MSAs in place should consider conducting a wholesale review of the terms and conditions, as well as all payments associated with each MSA, according to Kemp. This will help determine whether the MSA involves any kind of referral—on paper or in practice—that might be viewed by the CFPB as problematic under RESPA. If you find that an MSA does confer benefits that regulators may perceive as a referral, you should speak with inside or outside counsel immediately to determine whether further analysis, remediation and/or even self-reporting to the CFPB is appropriate.”

Whether or not MSAs are part of a company’s business model, Kemp suggests company executives review business objectives in light of the substantial risks and consequences of non-compliance with the CFPB’s interpretation of RESPA, which is not always the same as HUD’s precedent.

“If, after careful analysis you determine that the potential rewards of an MSA are worth the growing regulatory risk, at a minimum you should go forward with these agreements only after consulting counsel and independent third-party valuers and satisfying yourself that your process for monitoring and documenting the performance of the

MSA parties on an ongoing basis is adequate to withstand inevitable regulatory scrutiny,” Kemp said.

Earlier this year, the Mortgage Bankers Association urged lenders to “immediately re-evaluate their MSA programs if they wish to avoid supervisory or enforcement scrutiny that considers many of these arrangements to be violations.”

“The CFPB views MSAs as highly risky ventures often designed to evade the Real Estate Settlement Procedures Act that hurt consumers and are likely to violate Section 8 of RESPA,” the MBA said.

The regulatory concerns have led many lenders to re-write their MSAs, while Bank of America, Wells Fargo, Prospect Mortgage and PHH Mortgage have abandoned them. The same day Wells Fargo made its announcement, the CFPB issued a statement that said it was “concerned that such agreements can carry significant legal risk for companies and undermine transparency for consumers.”

Self-Reporting Encouraged

The CFPB’s bulletin on MSAs encourages mortgage industry participants to carefully consider the compliance and legal risks associated with MSAs and to consider self-reporting their own conduct to the extent it may violate RESPA in accordance with CFPB’s earlier bulletin on responsible business conduct and self-reporting. In 2013, the CFPB issued a bulletin that shed light on the factors the bureau considered when exercising its enforcement muscle. These included:

- the nature, extent and severity of the violations identified
- the actual or potential harm from those violations

- whether there is a history of past violations
- a party's effectiveness in addressing violations

The CFPB put additional emphasis on companies that self-report violations. "Of the four categories, however, prompt and complete self-reporting to the Bureau of significant violations and potential violations is worth special mention. While no substitute for effective self-policing, self-reporting substantially advances the Bureau's protection of consumers and enhances its enforcement mission by reducing the resources it must expend to identify potential or actual violations that are significant enough to warrant an enforcement investigation and making those resources available for other significant matters. Prompt self-reporting of serious violations also represents concrete evidence of a party's commitment to responsibly address the conduct at issue. For these reasons, the Bureau puts special emphasis on this category in its evaluation of a party's overall conduct," the bureau stated in the bulletin.

Highlighting how it values self-reporting, the CFPB did not penalize an unnamed third lender involved in the Genuine Title consent order.

Tread Carefully

The CFPB may be sympathetic to companies that self report violations, but it does not look favorably on MSAs where the services are directed toward other settlement service providers rather than toward consumers.

"It's a dangerous area when you have enforcement at the CFPB pressing forward with a policy that is contrary to what the regulations say, and it puts people in the industry in a

very difficult position, and it renders (MSAs) a little risky," said Mitch Kider, chairman and managing partner at the law firm Weiner Brodsky Kider.

While the CFPB has not issued a wholesale ban of MSAs, the agency's examination and enforcement actions focus on whether consumers benefit from the arrangements, Kider said. "Bottom line with all of this is, the CFPB wants you, if you are going to be making a referral, to be making that referral for the right reasons, not because you are getting paid for it," he added.

Schulman said marketing agreements can be structured properly as long as any payments are made specifically for advertising, not referrals. He added that if a lender or settlement service provider cannot determine the fair market value for the services it receives, it is likely a violation. He offered the following 10 best practices for MSAs.

- Avoid *quid-pro-quo* agreements: payments never for referral of business
- Get an independent third-party valuation
- Trust but verify: have the broker certify to the services performed, but conduct periodic on-site audits
- Services should be geared to advertising to general public, not individual consumers
- Do not pay for direct consumer solicitations or access to sales staff
- Avoid exclusive arrangements
- Avoid preferential designations
- Disclosure statement to consumers encouraged
- Justify reasons for adjusting monthly fees
- Comply with Section 8(c)(2)

"It's safe to say the CFPB is not a fan of marketing agreements, but that

doesn't make them illegal," Schulman said.

Korsmo said this will remain a complicated matter because each MSA must be evaluated on its own merit and the way the bureau determines whether a scenario is compliant with RESPA is very fact-intensive.

"It's always appropriate to follow the law; unfortunately we have regulators that say compliance depends on every situation. The only way the industry receives fact-specific guidance is through enforcement and that's not the best way to do this," Korsmo added. "There's a lot of speculation about the future of MSAs, and there is no one answer whether they are legal or not. A good avenue is to review RESPA requirements and restrictions, and assess the CFPB consent orders regarding MSAs. Companies should use real scrutiny and the rule of reason when evaluating marketing activities of their products and services."

The reality is that lenders and real estate agents continue to influence consumer selection of settlement service providers. However, a more informed consumer makes for a better marketplace. Because of this, ALTA encourages members to market directly to the consumer.

"Market disrupters such as technology change the way companies approach marketing their products and services," Korsmo said. "One area where companies should have little fear of regulatory repercussions is marketing their products and services directly to the consumer. To help members reach consumers, ALTA developed a member-exclusive consumer education program to assist in providing homebuyers information about the benefits of title insurance."

Review of RESPA Enforcement Actions and Key Takeaways

Lighthouse Title

In September 2014, the CFPB negotiated a consent order with Michigan-based Lighthouse Title for alleged violations of RESPA's prohibition against kickbacks. In the Consent Order, the CFPB claimed that Lighthouse entered into MSAs for advertising with real estate brokers. The CFPB said payments related to these agreements were based on the "volume or value of business referred" by such counterparties to the title agency. As a result of this practice, the CFPB alleged that Lighthouse violated RESPA both for entering into the MSAs and for varying the fees it paid based on the referral of business provided by the counterparties. As evidence of the violations, the CFPB cited the following:

- Lighthouse Title failed to determine, or document a method for a determination of, the fair market value for services it received under the MSAs.
- Lighthouse Title determined the fees it paid under the MSA, in part, based on the number and value of referrals received by the related counterparty.

- Lighthouse Title did not monitor whether it was receiving the services for which it contracted.
- The number of referrals provided to Lighthouse Title by counterparties was significantly greater if the title agency had entered into an MSA with the counterparty.

Key Takeaway: The CFPB will look beyond the face of an MSA and consider the facts of every agreement behind implementation, performance, and payments as between the settlement service provider and the referring party. In addition, the CFPB's consent order created a broad definition of "marketing services agreement," a term that is not defined in RESPA.

PHH Mortgage

In June 2015, CFPB Director Cordray overruled an administrative law judge and fined PHH \$109 million for allegedly violating RESPA by accepting payments for the referral of settlement service business pursuant to a captive reinsurance arrangement. In the opinion, Cordray agreed with in part, and reversed in part, a 2014 Administrative Law Judge ruling, expanding the penalty

against PHH from \$6.4 million to \$109.2 million. The CFPB found that PHH participated in a "mortgage insurance kickback scheme" in which the lender referred borrowers to certain mortgage insurers who, in exchange for the referrals, agreed to purchase reinsurance from a PHH subsidiary at supposedly inflated rates in violation of RESPA Sections 8(a) and 8(b).

PHH appealed the decision. In August a D.C. Circuit Court issued a stay against a \$109.2 million fine levied against PHH.

Key Takeaway: Cordray's ruling basically says that even if an agreement meets the requirements of a RESPA 8(c) exemption, if the agreement is in exchange for the referral of business it could still be a RESPA violation. Additionally, the bureau will take a liberal interpretation of each occurrence of a "kickback" to avoid the statute of limitations and obtain a higher penalty. The outcome will have a significant impact not just on MSAs but other agreements utilized by the industry. As ALTA said in its brief to the DC Circuit Court, Cordray's ruling, "would disrupt long-established business practices to the detriment of consumers."

Genuine Title, Loan Officers

In April 2015, the CFPB and the Maryland Attorney General filed a complaint in federal court alleging that executives of Maryland-based Genuine Title and several loan officers

traded cash and marketing services in exchange for mortgage referrals.

The complaint alleged that Jay Zuckerberg, founder of Genuine Title, and Brandon Glickstein, the company's director of marketing, developed and operated schemes to give loan officers marketing services and cash payments in exchange for referrals of mortgage business. Genuine Title went out of business in April 2014.

Specifically, the bureau and Maryland alleged that the defendants exchanged valuable marketing services for referrals. This included Genuine Title purchasing, analyzing, and providing data on consumers, and creating letters with the loan officers' contact information that the company printed, folded, stuffed into envelopes, and mailed. In return, the loan officers would refer homebuyers to the company for closing services.

While the CFPB targeted Genuine Title, it also took action against Wells Fargo and JPMorgan Chase for an illegal marketing-services-kickback scheme they participated in with Genuine Title. In both situations, the bureau alleged that the banks did not have an adequate system in place to identify these violations.

Key Takeaway: This is a good example of how state and federal regulators work together to enforce RESPA and other consumer laws. It also highlights the importance of self policing. A third lender was not penalized by the CFPB because the lender discovered the arrangement, corrected the problem internally and self reported the issue to CFPB.

RealtySouth

In May 2014, Alabama-based real estate firm RealtySouth reached a settlement with the CFPB for

using inadequate affiliated business arrangement disclosures. The CFPB accused RealtySouth of violating Section 8(a) of RESPA because the company's AfBA disclosure did not use capital letters, did not properly highlight the consumers' right to shop around and that the "required language was buried in a section of text that also made marketing claims about the company's prices." The CFPB also said RealtySouth's preprinted form purchase contracts either explicitly directed or suggested that title and closing services be conducted by its affiliate, TitleSouth. RealtySouth immediately changed its disclosures when contacted by the bureau.

Key Takeaway: Companies should review their affiliated business and other government model disclosures to ensure that they track the requirements of the regulation and mirror the model in substance if not form.

Borders & Borders

In October 2013, the CFPB filed a lawsuit accusing Kentucky-based law firm Borders & Borders for illegally paying kickbacks for real estate settlement referrals through a network of shell companies.

According to the CFPB's complaint, Borders & Borders operated nine joint ventures with the owners and managers of local real estate and mortgage broker companies, and allegedly used the joint ownership to disguise illegal kickbacks as legitimate profit sharing.

According to the complaint, the joint ventures were not bona fide entities and did not have their own office space, email addresses, or phone numbers, and all nine companies shared a single independent contractor

who was also an employee of Borders & Borders. The CFPB alleged each company only issued title insurance policies for homebuyers that had been referred to and by Borders & Borders.

Borders & Borders filed a response in United States District Court for the Western District of Kentucky denying wrongdoing, but the court in February 2015 denied the law firm's motion to dismiss.

Key Takeaway: The bureau will look beyond the face of an arrangement to determine its potential compliance with RESPA.

Stonebridge Title

In June 2014, the CFPB ordered New Jersey-based Stonebridge Title Services to pay \$30,000 for allegedly paying illegal kickbacks for referrals. The bureau charged that Stonebridge paid commissions to more than 20 independent salespeople who referred title insurance business to Stonebridge. Stonebridge solicited people to provide it with referrals of title insurance business, offering to pay commissions of up to 40 percent of the title insurance premiums Stonebridge received. Paying commissions for referrals is allowed under RESPA if the recipient of the payment is an employee of the company that is paying the referral. In this case, although the individuals received W-2 tax forms, the CFPB's investigation determined that these individuals were independent contractors and not bona fide employees.

Key Takeaway: The bureau will look beyond the face of an arrangement to determine its potential compliance with RESPA. ■

More than 1,000 Attend 2015 Annual Convention United to Succeed

Industry Unites in Boston for Common Goal of Protecting the Industry and Connecting with Consumers

With all of the market and regulatory changes, ALTA designed its 2015 Annual Convention in Boston so title professionals could leave with a blueprint to succeed. And despite the implementation of the TILA-RESPA Integrated Disclosure (TRID) rule just days before the start of the convention, more than 1,000 professionals united to attend the largest title industry gathering to learn and network.

“There’s no doubt our great industry is at a significant inflection point,” said Diane Evans NTP, ALTA 2014-15 ALTA president. “Together, however, we can navigate through this complex business environment. United we will protect our role in the real estate transaction. United, we will continue to meet market demands. United we will continue to protect homebuyers.”

During the convention, ALTA announced:

- the launch of its Homebuyer Outreach Program
- the redesign of its consumer

website Home Closing 101

- record membership of more than 6,000 companies
- that 49 members have received the National Title Professional designation

Focus on the Consumer

During the opening General Session, ALTA CEO Michelle Korsmo challenged attendees to shift their focus to the consumer in a way the industry never has before. Facing a Herculean change in the closing process and new mortgage disclosures that label owner’s title insurance as “optional,” Korsmo urged attendees to change past protocol and commit to embracing the possibilities of change.

“Our business has always been about our real estate partners,” Korsmo said. “The market right now, in every industry, is all about the consumer. The more you understand what the consumer wants and needs, the more power you have and the better prepared you will be to earn future business.”

As the real estate market evolves and continues to be driven more by consumers, title professionals also will need to strengthen relationships with existing business partners such as real estate agents and lenders.

“The entity with the most information and insight about the consumer holds the power,” Korsmo said. “This is true for our own industry preparing for TRID implementation over the past three years. You put in the time, energy and resources to ensure this industry was more prepared than anyone else—and it shows.”

Industry Priorities

During the closing general session of the convention, 2015-16 ALTA President John Hollenbeck NTP outlined the challenges and opportunities that lie ahead of the industry over the next 12 months.

Key areas that ALTA will focus on next year include:

- Continuing implementation of the TILA-RESPA Integrated Disclosures
- Advancing the adoption of ALTA’s Best Practices
- Communicating directly to homebuyers about the benefits of title insurance
- Promoting regulatory compliance with an emphasis on market conduct
- Expanding the focus on cybersecurity risks

“There is no shortage of issues facing our industry,” Hollenbeck said.

“In challenging times like these, we depend on a strong trade association. Fortunately, ALTA is strong and involvement by our membership is robust.”

Hollenbeck encouraged attendees to do a better job explaining why title insurance is beneficial to homebuyers. This age-old issue is more important now than ever. The urgency is spawned in large part by provisions of TRID, which labels owner’s title insurance as “optional” on the Loan Estimate and Closing Disclosure.

“ALTA’s Homebuyer Outreach Program provides many of the tools needed for members to reach out to homebuyers directly,” Hollenbeck said. “Our new Homebuyer Guide includes nearly 60 marketing pieces, advertising, blog posts, social media content and presentation samples.”

In addition to educating consumers, Hollenbeck encouraged attendees to share positive stories about the benefits of title insurance.

“How can we expect a homebuyer, unfamiliar with the benefits of owner’s title insurance to buy our product, if the only impressions they have of our industry are negative?” he asked. “Maybe they read in *The New York Times* that title insurance is a scam. Maybe they’ve heard about allegations of kickbacks, or read about a title person going to jail for stealing money from an escrow account. Maybe they’ve seen reviews on Yelp about an unethical closing agent. This point is worth repeating. If we expect homebuyers to act on our recommendation to buy an owner’s policy, we need positive impressions of our industry circulating in the communities we serve.”

In addition to advocating for compliance, the title industry must contend with the rising risk of cyber

security, which could be the “most severe threat we face in the near and mid-term,” Hollenbeck said.

“Homebuyers can lose confidential information entrusted to our care, and escrow trust accounts can be drained,” he added. “ALTA is working to connect our membership with cybersecurity experts to stay on top of the latest challenges and solutions.”

ALTA is in the process of joining the Financial Services Information and Analysis Center, which is a global resource for cyber threat intelligence analysis and sharing. Many lenders already participate in this organization. This resource will help ALTA member companies work to protect confidential information and funds.

Meaningful Connections

Mark Scharenbroich, author of *Nice Bike*, offered advice on making connections that move people and shared examples of how to apply this principle in business. Developing meaningful relationships with consumers comes down to three things, he said. They are acknowledging, honoring and connecting.

“Be curious about the other person. When you know their story, you connect with them. Be present in the lives of others and you will win,” he said.

Scharenbroich touched on the concept of customer experience with a Rolling Stones concert. Not a Stones fan, he reluctantly attended with a friend. He quickly changed his tune because of the experience the concert created.

“(Mick) Jagger comes out and starts playing. The group rocked. They played like it was the first time playing. They played with passion,”

Scharenbroich said. “You don’t have to be a rock star, but when you sit down with the homebuyer, walk them through the process. And do it with a passion. People who embrace and honor the journey really connect. Make it personal.”

Breakaway from Tradition

Concluding the final General Session, Captain Michael Abrashoff, author of *It’s Your Ship*, shared his amazing story of how he took command of the USS Benfold, ranked one of the worst ships in the Navy’s fleet, and turned it into a top performing ship. After taking command, Abrashoff broke from the traditional command-and-control leadership style and sought to see the ship from the eyes of his crew. He created a guiding set of principles called “Grassroots Leadership.”

“You have to stop obsession over things you can’t influence and focus on what you can,” Abrashoff said. I focused on my crew and gave them the best training I could, treated them with respect and dignity. Think about your own ship. We are all captains. Would you want your children to work for you?”

Abrashoff made it a point to connect with each sailor. Much like customers, each one speaks a different language and requires a different style of communication. Captains typically watch for sailors not following orders and then reprimand them. Abrashoff focused on the ones performing well. “This gives them validation and confidence,” he said.

“We set the expectations for the next generation,” Abrashoff continued. “If they see us holding ourselves accountable, they will step up to the plate. Everyone is watching us.” ■

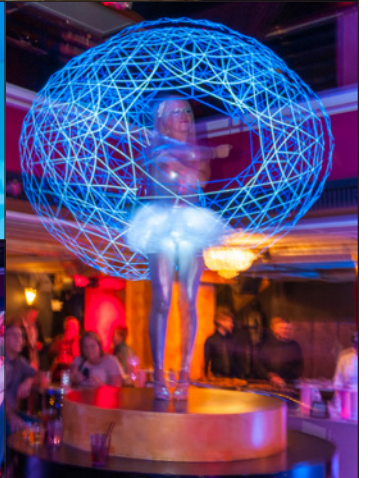
annual convention highlights



2015 Annual Convention Photos

To view photos, go to: www.flickr.com/photos/altaonline







annual convention highlights

General Session Day 1

General Session Day 2

General Session Day 3

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Title Industry Battleground Moves from Closing Table to Kitchen Table

Marketing Guru Encourages Title Professionals to View Their Business with a New Lens

The title insurance industry is at an inflection point and must look at itself through a new lens in order to remain viable, Don Neal, the founder and CEO of 360 Live Media, told attendees at ALTA's 2015 Annual Convention in Boston.

Highlighting his point, Neal shared examples of several business models that changed—for better or worse—during times of disruption. He said that there are moments in history when regulatory scrutiny and profound opportunity collide to present industry leaders with a bold opportunity to view their industry, organization and role in a new way. The title insurance industry's moment in history may have arrived with the implementation of the TILA-RESPA Integrated Disclosures.

"The closing table was the moment of truth for your business. This was the battleground to win," Neal said. "The battleground is no longer the closing table. It's the kitchen table. Now the discussion happens way before the closing."

With owner's title insurance labeled as "optional" on the Loan Estimate

and Closing Disclosure, homebuyers may opt to buy a new couch or curtains instead of protecting their property rights. To get attendees to see the situation through a new lens, Neal asked, "What business are you really in?"

Some will say title, others will say insurance and others will say underwriting. All accurate, but Neal said that title professionals are in the "protecting property rights" business.

"If you tell people that you protect property rights that will lead them to ask 'From what?'" Neal said. "From there, title professionals can explain how they provide peace of mind and why they are the 'sleep-at-night' guaranty."

While the industry faces many challenges, Neal believes a transition from a business-to-business model to a business-to-consumer model can be a silver bullet.

"View your business through a new lens and think of the homebuyer as your center of gravity," Neal said.

Making this business model transition will require shifting from a planned, logical and transactional model to one that focuses on emotion,

brand building and relationships. In addition, title professionals must avoid industry jargon and use terms that consumers can relate to. To close the gap, Neal encouraged attendees to start developing their story because they are "emotional transportations."

Quoting Intel CEO Andrew Grove, Neal said, "Only the paranoid survive."

"This industry has been quite protected and I think the world has changed," he said. "Somebody will disrupt this industry. Better to do it yourself. There's nothing you can do about the previous days in business. All you can do is what you can do today. Be proud of what you've done. The only reason you will win is because of what you've done in the past, but you can't rely on that for the future. It's a new day and a different game." ■



Build Success and Make Monday Different

ALTA Past President Provides Blueprint for Success

During the opening General Session at ALTA's 2015 Annual Convention in Boston, ALTA 2014-15 President Diane Evans NTP offered attendees suggestions on how to make Monday different and take home a blueprint for success.

Evans encouraged those in the audience to focus on a few items that can be implemented back at the office. One resource that ALTA members should be using is all the resources available in the Homebuyer Guide, which was developed to help members easily explain the benefit of owner's title insurance.

"For many consumers, buying a home is the single largest investment they will make in their lifetime and every homebuyer deserves clear information on how to help protect their property rights," Evans said. "Our industry's goals will be better served through a uniform national message and outreach approach. It is our responsibility as professionals to lead this consumer education initiative."

Regarding the CFPB's TILA-RESPA Integrated Disclosures (TRID), Evans reminded attendees that the disclosures were developed to improve the process for consumers.

"We must keep in mind that for the average homebuyer—they have little to no idea. But even more importantly, they probably don't care. They have a single purpose: getting their transaction closed," Evans said. "As an industry, our success in implementing these forms is not reflected internally, but rather through a commitment to ensure the consumer continues to have a great experience at the closing table. We have to be nimble, anticipate the unexpected and think outside the box. We must—and will—do this for the thousands of homebuyers who walk into our offices this year."

In addition to preparing for TRID, ALTA member companies of all sizes have been working in tandem to enhance their business standards. While not directly related to TRID, ALTA's Best Practices give companies an opportunity to take an in-depth look at their processes and procedures that are in place to protect our customers.

"By setting standards that protect both the information of the consumer and the lender, we are helping to secure our future in the real estate industry," Evans said.

Evans then turned to the importance of title professionals

becoming advocacy experts. In her eyes, it's no longer enough to just be a title expert.

"Let's not forget, none of us became title experts overnight, and your advocacy expertise will be no different. There are a number of ways to get involved and be a voice for our industry," Evans said.

Evans encouraged those in attendance to join the Title Action Network and get involved in TIPAC and the Congressional Liaison program. She also recommended attending ALTA's Federal Conference and Lobby Day.

"I encourage you to mentor staff and colleagues in your state to get more involved and step up to make a difference and help ensure a thriving future for our industry," Evans said.



CFPB Dishes on TRID, Vendor Management and Marketing Services Agreements

ALTA CEO Interviews CFPB Assistant Director for Mortgage Markets

In an interview with ALTA CEO Michelle Korsmo during ALTA's 2015 Annual Convention in Boston, Tricia McClung, assistant director for mortgage markets, provided insight into issues the Consumer Financial Protection bureau (CFPB) is focused on that will impact the title insurance and settlement industry.

MICHELLE KORSMO: The industry was very encouraged to receive a letter from CFPB Director Cordray stating that regulator examinations regarding TRID compliance would be "diagnostic" and not "punitive" and that regulators won't have the expectation that industry will be "perfect on the first day." As you see things that you think should be fixed with the way we are implementing TRID, how will the bureau communicate with industry about how to modify implementation strategies?

TRICIA McCLUNG: One of the reasons why we didn't put anything together regarding a specific hold-harmless period is because good-faith efforts will vary differently. Good-faith efforts from small lenders who may

be vendor dependent may be very different compared to large lenders that may have their own technology but have many branches to get all the kinks worked out. If we see a positive trajectory of working through the changes and continued commitment to getting into compliance, that's what we're looking for. Typically, what we will be looking for is if the numbers are accurate on the forms.

KORSMO: What does the Bureau look at when reviewing a lender's vendor management program? If the consumer makes the choice, how do you balance with the lender knowing the vendor?

McCLUNG: This is a tough one. Generally, reasonableness does prevail. In terms of vendor management, there are a couple of things that are important. First, the lender must be

accountable for the vendors they work with in some form. If the consumer picks the settlement agent, the lender should work with the consumer and the title company to figure out how they can work together. In long-standing relationships where there's a lot of information being shared, we want to make sure the creditor understands the quality of service they receive from their vendor. We don't want to put the lender in a situation where they can't create a Closing Disclosure. On the other hand, if the consumer makes the choice, the lender shouldn't have to worry about doing the same due diligence. As long as the Closing Disclosure meets the needs of the consumer at the end of the day, that's what matters most.

KORSMO: We were pleased that the bureau released a bulletin on marketing services agreements. Can you talk about the CFPB's intent and message on how it looks at MSAs?

McCLUNG: The bulletin was a way to give a view of where the CFPB is coming from. What looks appropriate in an agreement on paper isn't what's really happening in execution. Many in the industry have told us that these have become pay-to-play and there's not a direct benefit to the consumer or organization. With all the variety we see in these, it's hard to say all should be treated equally. The word of caution is out there. Director Cordray has been clear that he wants further examinations in this area. People need to think about the risk to their business. ■



A person in a purple jacket is seen from behind, sitting on the deck of a sailboat. The boat's white sails are visible, and the background is a dramatic sunset sky with golden light reflecting on the water. The overall mood is serene and adventurous.

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- Amanda Brumbelow, RamQuest Customer & Director of Closing Operations, WACO Title



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10 Questions with John (Jack) Robichaux NTP

Title: Manager

Member Company: Ironclad Title LLC

How long have you been in the title industry and how did you get started in this profession?

I began my career in June 1969 with one of the first female attorneys in Gonzales, La., which is a small town between Baton Rouge and New Orleans. That attorney had a real estate practice and she taught me how to chain and examine title both from title materials and stand-up from the clerk of court's records. Four and a half years later, I relocated to Lake Charles, La., joining a 15-person law firm that represented owners of large land and oil and gas holdings, as well as the largest bank in the area. That firm grew to 65 in number with five offices in Louisiana and one in Washington, D.C.

What excites you about what you do or what is the most challenging aspect of your job?

Unquestionably, my biggest excitement comes from the people I work with and the opportunity to assist consumers with perhaps the most important purchase of their lives. I can't think of anything else I would rather do, except be with my family and maybe catch a fish or two.

What's your best industry "war" story?

I can think of several. Back in the 1970s, I was working in Alexandria, La. I had a closing, and the buyer was from a small community about two hours south of Alexandria. They operated an antiques business and were relocating. Because of their working hours, they had to drive up after work. When they arrived, I greeted them and soon learned that they had brought the money for the purchase price. It was a suitcase full of cash—all \$35,000. That was real money back then, and I

sure didn't want anything to do with it. I told them to spend the night, go to the bank in the morning and bring a cashier's check for the closing. They weren't thrilled, but they did it, and we closed the next morning.

How has the industry evolved since you began your career? How has your company had to change in order to remain competitive?

When I first started, we represented lenders, banks, mortgage companies, and savings and loan companies. The business came to us, and our fees were usually 1 percent of the loan amount which was quite good. Today, there is so much more competition. You constantly have to be looking for new opportunities and marketing. There was no such thing as marketing when I first started. In fact, it was considered unethical. We've gone from four



A Jack and Mandy Robichaux

sheets of carbon paper—where if you made a typo on a promissory note you had to start over—to self-correcting computers, integrated software, a full-time marketer and web designer.

What advice do you have for professionals starting their career in the industry?

Don't assume anything. There is no such thing as a stupid question. Don't wait for the business to come to you. Get out and meet real estate agents, lenders, contractors and consumers.

Why are you a member of ALTA?

I initially joined ALTA when I was president-elect of our state association. I soon learned that ALTA is an incredible organization that works unceasingly to protect and promote the interests of the land title industry. If I had to choose one organization

to join, I would discard every other organization except for ALTA. Nowhere else can you get the resources, keep up with an ever-changing industry, and make lifelong friendships across America with title agents as well as underwriters.

Which ALTA committees do you participate in? Why do you participate?

I participate in the Governmental Affairs Committee and was just recently nominated to the Executive Committee for the Abstractors and Title Agents Section of ALTA. I believe that we can't just sit back and let events or others chart our course.

Tell us something that others in the industry may not know about you.

I'm an avid home gardener. Last year I planted 650 strawberry plants.

My wife Mandy and I are the parents of seven children and 28 ½ grandchildren, but none live in our home town, Lake Charles.

If you could have dinner with anyone, who would it be and why?

Blessed Mother Theresa of Calcutta. She provided more than peace of mind. She had a giving, caring, boundless loving heart and concern for our fellow man. I could use a dose of that.

What's your favorite book or movie?

I guess I can't say the Cabela's catalogue. I have many favorites, but I have lately enjoyed a mystery series of books written by James Lee Burke, the most descriptive writer I have ever read. It also helps that his central character is detective Dave Robichaux. ■



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Underwriters Anticipate TRID to Delay Closings During Fourth Quarter

Companies Report Strong Earnings during Q3 of 2015

Strong residential purchase and commercial markets helped several ALTA member companies post successful earnings results during the third quarter of 2015. However, the companies indicated that fourth-quarter revenue could be pushed to 2016 due to delays in closings caused by the TILA-RESPA Integrated Disclosures. Here's a summary of earnings results:

Fidelity

Fidelity National Financial reported that its title segment generated \$244 million in pre-tax earnings during the third quarter of 2015. This compares to pre-tax earnings of \$224 million during the same period in 2014.

"We generated a solid 14.9 percent adjusted pre-tax title margin this quarter, essentially at the lower end of our normalized title margin target range," said Bill Foley II, chair of Fidelity National Financial. "The commercial market remains

very strong, the residential purchase market continues to steadily improve and the residential refinance market has been declining, although a recent drop in rates may provide a further period of improving refinance volumes. Additionally, as we enter the seasonally slower fourth quarter, our title margins will have to absorb the cost and more lengthy closing process resulting from the new TILA-RESPA closing disclosure requirements."

During the third quarter of 2015, Fidelity's direct operations opened 514,000 orders and closed 378,000 orders. Of the orders closed, 60 percent were purchases. This compares to 481,000 direct orders opened and 348,000 closed orders during third-quarter 2015. Purchases comprised 62 percent of closed orders during this period.

Fidelity reported that its claims loss provision was reduced to 5.5 percent for the third quarter, driven by significantly lower title loss payments related to policy

years 2009-2014. During the latest quarter, the company paid \$70 million in claims, a decrease of \$11 million from the third quarter of 2014.

First American

First American Financial Corp. reported that its title insurance and services segment generated pre-tax income of \$137 million. This compares to pre-tax income of \$121 million during the same period a year ago.

"Our third-quarter results in the title segment were strong, driven by higher closing activity in the residential purchase market and continued growth in our commercial business," said Dennis Gilmore, chief executive officer at First American Financial. "Our continued effective management of expenses enabled the title segment to generate strong operating leverage and a pre-tax margin in line with our 10 to 12 percent target range."

Gilmore said that it's too early to evaluate the impact of the CFPB's TILA-RESPA Integrated Disclosure rule, but that the company expects "temporary delays in closings as the industry adapts to the changes required."

"Despite these anticipated delays, we are optimistic that the market environment will continue to be favorable in 2016," he added.

During the quarter, First American's direct operations opened 310,800 orders and closed 224,000.

This compares to 297,500 opened orders and 217,400 closed orders during the third quarter of 2014. Revenue from its commercial business increased from \$149 million in Q3 2014 to \$172 million during Q3 2015.

The provision for policy losses and other claims was \$71.8 million in the third quarter, an increase of \$6.7 million compared with the same quarter of the prior year due to an increase in title premiums and escrow fees. The current quarter rate includes an ultimate loss rate of 6 percent for the current policy year. First American paid \$50.2 million in claims during the third quarter of 2015. The company paid \$57.2 million in claims during the same period in 2014.

Old Republic

Old Republic International Corp. announced that its title insurance group generated \$55 million in pre-tax income during the third quarter of 2015. The company reported that this was a record quarter for its title group. This compared to \$28.2 million in pre-tax income during the same period in 2014.

In a release, the company said, “The substantial bottom line improvement in this year’s first nine months was attributable to the very good performance for this segment’s basic underwriting and related services functions. Stronger housing and commercial property transactions together with continued market share strength led to the significant percentage growth of operating revenues. Net investment income gained on the strength of greater yields on a slightly larger bond and stock investment portfolio. Operating results were buoyed by

lower claim and operating costs relative to premiums and fees revenues.”

The title insurance group’s claims ratio was 5.6 percent during the latest quarter. This was down from 6.1 percent during the third quarter of 2014. The company paid \$31.9 million in claims during the third quarter of 2015. This compared to \$28.6 million in claims paid during the same quarter in 2014.

Stewart

Stewart Information Services reported that its title segment generated pre-tax income of \$78.7 million during the third quarter of 2015. This compares to pre-tax income of \$74.9 million during the same period a year ago.

“Our title operations continued to deliver solid results, with strong revenue growth and improving margins compared to the year ago quarter,” said Matt Morris, CEO of Stewart. “We saw increases in transaction volume across all our title operations. We will maintain our focus on disciplined and accountable sales growth, regularly and rigorously evaluating office performance, seeking profitable agency relationships and emphasizing commercial growth.”

During the third quarter of 2015, Stewart’s direct operations opened 121,524 orders and closed 95,223 orders. This compares to 125,757 opened orders and 85,186 closed orders during Q3 2014.

As a percentage of title revenues, title losses were 5 percent in the third quarter 2015. Title loss expense increased to \$25.9 million in the third quarter 2015 compared to \$9.1 million in the third quarter 2014.

Due to the impact the CFPB’s TILA-RESPA Integrated Disclosures are having on the mortgage origination and closing cycle, Stewart believes there could be a shift in revenue to later in the fourth quarter or into the first quarter of 2016.

“While loan applications were down more than 27 percent in the first full week in October under the requirements, we’ve only experienced a modest decline in opened orders per workday as compared to September, but it is too early to discern a trend,” Morris said.

Investors Title

North Carolina-based Investors Title Co. reported pre-tax income of \$6.4 million during the third quarter of 2015. This compares to \$3.6 million in pre-tax income during the same period a year ago.

According to earnings results, the company’s revenue increased 17.1 percent versus the prior year quarter, primarily due to a 17.4 percent increase in net premiums written. This set a new quarterly record level of both revenues and premiums written.

“Title insurance premiums were bolstered by higher levels of home sales activity as well as continued increases in real estate prices,” said J. Allen Fine, chairman of Investors Title. “While the pace of loan closings may slow during the fourth quarter in the wake of the October 3 TILA-RESPA Integrated Disclosure Rule (TRID) implementation, we remain encouraged that positive trends in the unemployment rate and overall economic conditions will sustain the levels of purchase activity, at least for the near future.” ■

FHA Offers TRID Grace Period Through April 16

Announcement Follows Similar Guidance Released by Fannie Mae and Freddie Mac

In a letter to the industry, the Federal Housing Authority (FHA) announced it established a grace period until April 16, 2016, for the enforcement of the Consumer Financial Protection Bureau's (CFPB) Know Before You Owe TILA-RESPA Integrated Disclosures (TRID) rule.

The FHA indicated it is aware of the significant efforts taken by lenders, vendors and service providers to meet the Oct. 3 implementation date for TRID.

"In recognition of these challenges, and the recent announcements by the CFPB and the Government

Sponsored Enterprises regarding compliance monitoring of the new rule, (Single Family Housing) is announcing that it will not include technical TRID compliance as an element of its routine quality control reviews," the FHA wrote in its letter. "(Single Family Housing) does expect mortgagees to make good faith efforts to comply with TRID, which, at a minimum requires the use of the TRID required forms. Consistent with current practices, (Single Family Housing) will evaluate whether the correct forms were used in connection with the origination of FHA mortgages."

The announcement by the FHA follows similar guidance about good-faith efforts to comply released by Fannie Mae and Freddie Mac. Meanwhile, CFPB Director Richard Cordray said that during initial examinations for compliance, the bureau's examiners "will evaluate an institution's compliance management

system and overall efforts to come into compliance, recognizing the scope and scale of changes necessary for each supervised institution to achieve effective compliance." The Office of the Comptroller of the Currency issued a letter with similar language regarding TRID compliance.

On Oct. 7, the U.S. House of Representatives passed legislation driven by ALTA that would create an official hold-harmless period through Feb. 1, 2016 for companies making good-faith efforts to comply with TRID. Sponsored by Reps. French Hill (R-Ark.) and Brad Sherman (D-Calif.), the Homebuyers Assistance Act (HR 3192) also would provide companies relief from civil liability during the hold-harmless period. ALTA will continue to reach out to members of the Senate to encourage them to pass this important legislation. ALTA's coalition continues to work with Sens. Tim Scott (R-SC) and Joe Donnelly (D-Ind.) to bring S. 1711, the Senate version of H.R. 3192, to the Senate floor as soon as possible. ALTA will provide updates on the progress of this legislation.

The FHA's letter reminded mortgagees that they "remain responsible for ensuring they are able to convey good and marketable title to FHA and meet all other requirements for FHA insurance endorsement." ■



Property Records Industry Association Releases Paper on TRID

The Property Records Industry Association (PRIA) released an informational paper on the Consumer Financial Protection Bureau's TRID rule.

The paper outlines why recorders should care about TRID, how the changes impact settlement agents and the need to obtain accurate recording fees in advance.

The paper encourages PRIA members to work to change state legislation "to provide a uniform, or

predictable, recording fee for each document type."

"Recording fee pricing models based on page count and add-on fees that vary from jurisdiction to jurisdiction are problematic to the industry," the paper stated. "It is often the case that two recording offices in a state interpret statutory fees differently. Any variances on fees must be corrected by the lenders within 30 days of document signing, not within 30 days of recording."

Pavaso Launches End-to-End Digital Real Estate Solution

Real estate technology company Pavaso completed its end-to-end digital process for the industry with the addition of its sales contract negotiation tool for real estate agents.

The tool allows deals to start digitally and flow through their established process with lenders and settlement agents, creating a unified modern experience for consumers, the company said in a release.

Pavaso said its end-to-end real estate process brings all transaction stakeholders together in

a secure, collaborative portal. Lenders, settlement agents, real estate agents, consumers, attorneys, service providers and even investors now can participate in a digital real estate life cycle, according to Pavaso. This process not only solves challenges businesses face with the new TILA-RESPA Integrated Disclosures (TRID), but it also provides an "evolutionary path" for the industry to enter the 21st Century.

First American Unveils New Fraud Tools

First American Financial Corp. integrated its DataTree property research solution with the FraudGuard loan-level fraud detection and data integrity tool to help lenders investigate potential fraud and loan quality issues.

The integration was launched in conjunction with First American's FraudGuard Property Overview, a next-generation collateral risk analysis component that promotes superior loan

quality. Lenders relying on FraudGuard receive alerts to identify potential collateral, ownership and borrower issues and will particularly benefit from the DataTree integration, according to First American. With this approach to research, issues such as undisclosed properties and liens, signature fraud and real estate owned assets can now be addressed more efficiently and with more certainty.

NATIC Adds Central Property Search as Preferred Search Provider

North American Title Insurance Co. (NATIC) has added the search provider Central Property Search Inc. (CPS) to its preferred provider list.

CPS is a family and women-owned business, providing title searches, commitment production, tax searches, recording and document retrieval in Pennsylvania.

Joining the NATIC SearchLink Network offers search providers such as CPS the capability of handling local searches at competitive prices. Each provider contracts with NATIC. Any liability for errors caused exclusively by the preferred vendor remains with the SearchLink Network and NATIC.

Simplifile Announces E-recording in Five More Wisconsin Counties

Five more Wisconsin counties have started offering electronic recording services through Simplifile. With the addition of e-recording in Ashland, Florence, Juneau,

Sawyer and Vilas counties, Wisconsin now has 52 counties e-recording with Simplifile. More than 1,320 counties and recording jurisdictions e-record with Simplifile.

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Eight Resolutions for 2016

As title professionals, it's natural for most of us to examine the past. To be good stewards of our industry—and of ourselves—we must always keep an eye on the road ahead. New Year's resolutions are an annual opportunity to reflect on the past and dedicate ourselves to a brighter future. Here are my eight industry resolutions for 2016:



- 1. Continue Supporting ALTA:** Thanks to support from you and thousands of other professionals, ALTA membership continues to grow and is at an all-time high of more than 6,000. In addition to being a member, there are so many ways to get involved. Join a committee. Sign up for the Title Action Network. Become a Congressional Liaison. Share your expertise and present at a conference.
- 2. Best Practices:** ALTA's Best Practices continue to gain acceptance from lenders. Make sure your company has completed its due diligence, implemented the Best Practices and received certification if required by your lender. ALTA will improve its Best Practice governance structure to manage concerns and revisions more effectively.
- 3. TILA-RESPA Integrated Disclosures:** Continue to refine your processes as your company handles more TRID orders. There will be bumps and we are hearing about some of the issues with the data and disclosures, but after a few months things will start getting back to normal. In the meantime, ALTA is collecting data on the impact TRID is having on closings to effectively advocate for improvements to the rule.
- 4. Consumer Experience:** Promote the adoption of ALTA's Homebuyer Outreach Program at your company. From your sales staff to your closers, everyone needs to be able to talk title to consumers. There are more than 60 tools and resources to help explain the benefits of title insurance to consumers. It's our professional responsibility to educate the consumer.
- 5. Industry Integrity:** As you can see by this edition's cover article, the CFPB is viewing compliance through a new lens. You should too. Keep yourself educated on regulatory enforcement action, consent orders and other actions regarding regulatory compliance. Each one of us plays an important role in ensuring the integrity of our great industry remains high. To help, ALTA is launching a Compliance Webinar Series in 2016.
- 6. Find a Healthy Work-Life Balance:** With technology all around us, it's more challenging than ever to juggle the job demands and the rest of your life. Make sure you build down time into your schedule. Get moving and make time for exercise. Research shows exercise makes you more alert and more productive. And remember to relax and set realistic goals. Even during a busy day, take 15 minutes to recharge.
- 7. Cybersecurity:** If this isn't on your priority list, add it pronto. You must pay attention to what's happening in the cyber world. Make sure you have implemented a plan to protect non-public personal information, your clients' funds and your company's image. ALTA will provide additional tools and education on practical, scalable ways to operate securely. It's critical you fortify your systems, making security a collective operational effort supported by your entire company.
- 8. Remember to Smile:** Humans are reciprocal creatures. We pick up on signals from others. The benefits of smiling are scientifically proven and include reduced stress levels and increased feelings of well-being. I hope to see many of your smiling faces in 2016. Smile on!

— John Hollenbeck NTP, ALTA president

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