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Official Publication of the
American Land Title Association

TitleNews

The Hunt for Dark Money

FinCEN Leans On Title Industry to Help Snuff Out
Money-laundering Schemes and Collect Information
About Suspicious All-cash Deals



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Robert Dawson, ALTA's 1973-74 president, passed away Jan. 5 at the age of 92

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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

April 6 - 8	Palmetto Cherokee, NC
April 7 - 8	Tennessee Pigeon Forge, TN
April 14 - 16	Oklahoma Catoosa, OK
April 24 - 26	California Newport Beach, CA



Look at What You're Missing
in this month's Digital Issue



ALTA CEO on NPR; Protecting Escrow Accounts

Michelle Korsmo, ALTA's CEO, talks with NPR about FinCEN's order to collect information about suspicious all-cash transactions. Check out a portion of a recorded webinar that addresses Best Practices to protect your escrow trust accounts.

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

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Connect with Your Customers

I've been talking about getting to know your customer for the past couple of years. As we have been doing work at ALTA to develop the right messages and materials, one of the more interesting things I've learned about is the Net Promoter Score.

Essentially it works like this, a company surveys its customers and asks a simple question on a scale of zero to 10 how likely they would be to recommend their products or services. Scores of nine to 10 are considered promoters. Detractors are those who give a score of zero to six. (Sevens and eights are unenthusiastic and don't factor into the score.) To figure the score, you take the percentage of promoters, subtract the percentage of detractors and get your Net Promoter Score.

The key is to figure out why the promoters love doing business with you and why the detractors don't. Closing the loop with your customers is an excellent way to learn what's pleasing them so you can turn detractors into promoters.

The Lego Group (the people who make the great kids' toy that is a killer when it's stepped on) took this approach after nearly going bankrupt about a decade ago because it expanded too far beyond its primary toy brick products. The company decided to get in the minds of its most important customers: children. That required collecting consistent feedback to find out why certain LEGO sets failed. This allowed the company to make tweaks earlier in the process and also launched the LEGO Friends line, successfully creating a product that girls wanted more than their traditional offerings.

The point is that to succeed in this evolving market, you need to approach transactions from the eyes of your customer.

Title professionals have a challenge because you must meet the needs and expectations of both homebuyers, who are our customers, and the Realtors and lenders with whom you do business. Gauging loyalty and determining which relationships generate revenue can be complicated. There's a lot of customer data that can be collected and analyzed, but at the end of the day it comes down to a basic question: Do your customers love doing business with you?

Interestingly, title professionals in two parts of the country will need to learn more about their customers due to recent orders from the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). FinCEN is requiring several title insurance underwriters to collect information on individuals involved in shell companies and other legal entities that make all-cash purchases for high-end residential real estate in Manhattan, N.Y., and Miami-Dade County, Fla. I encourage you to read more about the order in this edition's cover article.

A customer-centered approach takes commitment, but it's a simple concept with positive results.



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

— Michelle Korsmo, ALTA chief executive officer

ALTA, Trade Groups Share Concerns Over Proposed FHFA Borrower Survey

ALTA joined nine other trade associations in a letter to the Federal Housing Finance Agency (FHFA) sharing concerns about a proposed survey to collect information on mortgage borrowers.

The proposed survey is part of a National Mortgage Database project with the goal of including detailed information on more than 10 million borrowers. FHFA intends to collect this information through a voluntary survey of individuals who currently have a first mortgage loan secured by single-family residential property. The survey would be, in effect, an updated version of FHFA's existing National Survey of Mortgage Borrowers.

The proposed survey would use a questionnaire consisting of 80 to 85 questions intended to elicit information from mortgage borrowers about their loans. FHFA's stated goal of the database is to "support policymaking and research efforts to understand emerging mortgage and housing market trends."

"We believe it is

appropriate for the government to better understand the residential mortgage markets, as greater understanding of the current trends and forces impacting homebuyers is critical to the development of policies that foster a safe and sound marketplace," the letter states.

However, the database:

- *is overly extensive*
- *poses a significant danger to consumer privacy through re-identification*
- *is duplicative of other databases.*

Because of this, ALTA and the other trade groups believe the database should not be introduced until several steps are taken, including consultation with the Consumer Financial Protection Bureau (CFPB) to ensure that FHFA and CFPB data cannot result in re-identification of consumers. The steps should also include soliciting additional input on the survey topics and questions.

There is significant concern over privacy issues due to the extent of the database and the number of individuals who will be allowed access. Even under

the best circumstances, there's a strong chance that system data could be leaked or breached by hackers and other intruders and result in harm to consumers.

"Data in the database can be pieced together with data from other private and public databases to identify individual borrowers and associate an even greater amount of confidential information with them," according to the letter. "There would be

great harm to consumers if the information were to be released carelessly or unwittingly, or if it were to be accessed by individuals aiming to do harm."

ALTA encourages the FHFA:

- *review the goals of this proposed survey*
- *identify genuinely unique data points not otherwise captured by existing surveys*
- *utilize focus groups*
- *reissue a more complete survey for comment.*

NYSLTA Successfully Uses Title Action Network

In December, the New York State Land Title Association (NYSLTA) successfully used the Title Action Network to convince Nassau County legislators to delay implementation of new fees for tax map verification and recording certain documents with the county.

The fees were approved as part of the county's 2016 budget and only gave the industry 48 hours' notice. Bob Treuber, executive director of NYSLTA and Marianne Mathieu, the association's president, contacted TAN about how

the fees would negatively impact title agents across the state. A TAN alert was issued just as Treuber testified before the county legislature. Following Treuber's comments and the TAN alert, the county legislature passed an emergency action to postpone implementation of the fees until Jan. 4.

As your state plans its 2016 advocacy efforts, contact Awesta Sarkash, ALTA's grassroots and advocacy manager, at awesta@alta.org to learn about the value TAN brings to your state association.

How to Use ALTA's Homebuyer Guide: Rack Cards

ALTA created the Homebuyer Guide to help members easily communicate the benefit of owner's title insurance. The Homebuyer Guide includes more than 60 marketing resources available for direct-to-consumer communication. These materials are available to members.

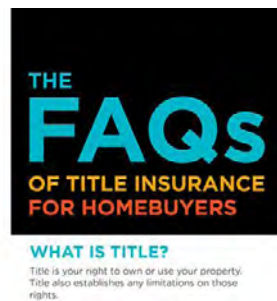
Here, we focus on how you can use the various rack cards that are available. What is a rack card? These documents are used for advertising, and frequently found in hotels, restaurants, rest areas and other locations that get significant foot traffic. Rack cards typically have an appealing graphic design and are 4-by-9 inches in size.

ALTA has created three

rack cards available to members to provide to consumers and real estate partners. Go to alta.org/homebuyer to view all the material available in the Homebuyer Guide.

The FAQs of Title Insurance for Homebuyers

How to Use: This rack card can be displayed in the closing office or real estate office, or be hand delivered when meeting with homebuyers. Below is the top of the front of this card:



Register for ALTA Homebuyer Outreach Program Workshop to Improve Consumer Communication

Title professionals across the country have asked for training on ALTA's Homebuyer Outreach, so ALTA has scheduled several workshops across the country. The workshops provide information on how to educate consumers about the benefits of title insurance, manage online consumer complaints and promote your business.

Upcoming workshops will be held:

- *Minnesota, April 3*
- *New Jersey/New York/Pennsylvania, April 12*
- *Florida, April 19*
- *Missouri, Aug. 9*

Go to meetings.alta.org/hop for more information and to register.



10 Steps to Buy Your Home with Confidence

How to Use: Real estate agents can use "The Homebuyer Checklist: 10 Steps to Buy Your Home with Confidence" PowerPoint in conjunction with this rack card. It can also be displayed in the real estate office. An example of half of the back of this rack card is below:



You Sweat the Small Stuff

How to Use: Pin this to the company fridge, share it with a fellow title professional or use it as a guide for remembering the top three things you give homebuyers. Below is what the top of this marketing piece looks like:



Carr, Riggs & Ingram Named ALTA Elite Provider

ALTA announced that Carr, Riggs & Ingram (CRI) has been named an Elite Provider. ALTA's Elite Provider Program is comprised of service providers committed to offering comprehensive benefits to the title insurance and settlement services industry.

CRI helps title companies prepare for ALTA Best Practices compliance certification process. With CPA offices in 20-plus markets, CRI can provide ALTA members with a level of responsiveness and accessibility designed

to deliver a heightened client experience. Once compliant, CRI works with title companies to deliver a compliance certification report that lenders may require to be included (or to remain) an "Approved List." This marketing differentiator can help title companies gain a competitive edge in their marketplace.

CRI offers ALTA members a complimentary one-hour consultation regarding any ALTA Best Practices subject(s) of their choosing with a CRI partner and will provide a summary outlining the conversation.



28 Ways We Love Title is Back!

Each day in February, we post one of the many reasons that we love our members and the land title insurance industry! From our “Keep Calm and Love Title” images to our industry pride posts, we’ll cover all of the ways this industry is a vital part of the housing industry. This year, we’ll offer a few prizes during the promotion as well. Be sure to like ALTA on Facebook at www.facebook.com/altaonline and follow us on Twitter with @ALTAonline. If you have your own ways you love this industry, email us at social@alta.org so that we can include you this month.

Social Media Pro-Tip: Is Social Media Included in Your IT Protocol?

As many ALTA members continue to work on the Best Practices pillars, it’s important to remember to include social media procedures in your IT security breach protocol. Think through your plans for limiting your organization’s social media presence during a security breach. Create a system for monitoring and responding to complaints during any potential crisis. Establish safeguards that work for the size of your

organization to prevent the release of confidential/sensitive customer information over social media accounts. Finally, establish controls and procedures to research and monitor the actions and security of any third-party tools used for social media efforts at your company, such as Hootsuite and Tweetdeck.



March Title Madness is Coming!



Our annual March Title Madness trivia tournament is March 15–April 4 on ALTA’s Facebook and Twitter accounts. Each year during Title Madness, we post industry trivia and each correct answer enters participants for a chance to win great ALTA prizes. Do you have great title trivia that we should include this year? Email us at social@alta.org.

SMS Registration is Open

Registration for ALTA’s 2016 Social Media Summit (SMS) is open. Visit meetings.alta.org/sms for information on the schedule and more. Our closing session speaker at this year’s SMS will be Steve Lerch from Google. If you have questions or experience any registration issues, please call 202-261-2932.

What is Snapchat, Anyway?

Don’t forget that ALTA has developed a social media dictionary with terms and definitions for several of the most popular social media sites, including Facebook, YouTube, Twitter and yes, even Snapchat. For a copy of the dictionary, check out ALTA’s Homebuyer Guide at www.alta.org/homebuyer.

The title industry is like the tide.



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OLD REPUBLIC INSURANCE GROUP

The Hunt for Dark Money

FinCEN Leans On Title Industry to Help Snuff Out Money-laundering Schemes and Collect Information About Suspicious All-cash Deals

During last year's Money Laundering Enforcement Conference (held jointly by the American Bankers Association and the American Bar Association), the director for The Financial Crimes Enforcement Network (FinCEN) provided a glimpse of the government's intention to analyze all-cash residential transactions. "BSA (Bank Secrecy Act) analysis continues to show corrupt politicians, drug traffickers and other criminals using shell companies to purchase luxury real estate," said FinCEN Director Jennifer Shasky Calvery. "We see wire transfers originating from foreign banks in offshore havens where shell companies have established accounts. The criminals will instruct the person involved in the settlement and closing to put the deed in the name of the shell company, thereby hiding the names of the actual owner or owners." >>

By Jeremy Yohe



BSA established anti-money laundering obligations for financial institutions, including institutions involved in real estate transactions. This covered real estate purchases financed by some type of mortgage—roughly 78 percent of residential transactions, according to the National Association of Realtors. “So our current regulatory structure captures this activity,” Calvary noted. As a result, all-cash deals were not included in the data being collected, and “it is this 22 percent that has our attention,” she added.

According to data from RealtyTrac, the share of cash transactions is even larger. RealtyTrac reported that all-cash sales jumped to 38.1 percent of U.S. single family home and condo sales during November. This is the highest level since March 2013, when 38.8 percent of sales were all-cash.

“Given that we saw spikes in cash sales at the state, as well as national level, we can assume that this was not a geographically isolated incident and that there were more fungible reasons for it,” said Matthew Gardner, chief economist at Windermere Real Estate.

Although real estate title and escrow companies are not specifically listed among the businesses defined as financial institutions in the BSA, “persons involved in real estate closings and settlements” are listed as financial institutions. FinCEN has not issued regulations defining who is included in this category, but Geographic Targeting Orders (GTOs) issued in January highlight the increased focus on the money laundering risks associated with real estate transactions.

FinCEN is concerned that all-cash transactions are being used by individuals to hide their assets and

Basics of the Geographic Targeting Orders

Which transactions must be reported? Covered transactions are the specific transactions that must be reported to FinCEN. To be a covered transaction all of the following elements must be present:

1. The buyer must be a **legal entity** (a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state or of the United States or a foreign jurisdiction)
2. Must be residential property located in the borough of **Manhattan**, N.Y., or **Miami-Dade County**, Fla.
3. For a **purchase price** of more than \$3 million (Manhattan) or \$1 million (Miami)
4. Made **without a loan** or other financing from a financial institution
5. Any portion of the purchase price is paid using currency, cashier's check, certified check, traveler's check or money order

Who must report these transactions? The specific title insurance company (covered business) that received the order must report covered transactions to FinCEN. Covered businesses also include any subsidiaries or agents of the title insurance company.

When must a covered transaction be reported to FinCEN? Within 30 days after the settlement or closing.

What time period is the GTO in effect? All covered transactions that settle between March 1 and Aug. 27, 2016, must be reported.

How long must records for covered transactions be retained? Five years from Aug. 27 or the end date, if the order is renewed.

Will the GTO stop transactions from closing? The order is not meant to prevent closings from happening. It is meant to allow Treasury to collect information about these transactions.

What information must a covered business report about a covered transaction? If a covered business is involved in a covered transaction, the information must be reported to FinCEN within 30 days after the closing using a Form 8300. The report must include:

- Identity of the individual primarily responsible for representing the legal entity
- A copy of a driver's license, passport or other similar identifying document for the person primarily responsible for representing the legal entity
- Identity of the legal entity and any of its individual beneficial owners
- A copy of the beneficial owner's driver's license, passport or other similar identifying document
- Date of closing
- Total amount of monetary instruments transferred (see *31 CFR 1010dd*)
- Total purchase price
- Address of the real property involved in the covered transaction

Criminal Penalties

Type of Violation	Penalty
Willful violation	<i>Up to \$250,000 fine and five years in prison</i>
Willful violation while violating another law of the United States	<i>Up to \$500,000 fine and 10 years in prison</i>
Structuring or assisting in structuring a transaction to avoid the currency transaction reporting	<i>Fine and up to five years in prison</i>

Civil Penalties

Type of Violation	Penalty
Willful violation (a separate violation occurs for each day the violation continues and each location a violation occurs)	<i>Greater of the amount involved (up to \$100,000) or \$25,000</i>
Failure to file a report, material misstatement or omission	<i>Not to exceed the amount involved in the transaction</i>
Structuring or assisting in structuring a transaction to avoid the currency transaction reporting	<i>Not to exceed the amount involved in the transaction</i>
Negligence	<i>Not to exceed \$500 or \$50,000 if a pattern of negligence is found</i>

identities by purchasing residential properties through limited liability companies or other opaque structures.

According to the GTOs, several title insurance underwriters must identify the names of individuals involved in shell companies and other legal entities that make all-cash purchases for high-end residential real estate in Manhattan, N.Y., that exceed \$3 million, and Miami-Dade County, Fla., that exceed \$1 million.

To help mitigate this potential money-laundering vulnerability, FinCEN requires certain underwriters to identify and report the true “beneficial owner” behind a legal entity involved in certain high-end deals in these two areas. The reporting requirement also pertains to the underwriters’ subsidiaries and agents. While the definition of a

covered business includes the insurer’s agents, only one report is required for each covered transaction. Depending on the policy and procedures of the covered insurer, the report can be filed by either the insurer or their agent.

“Over the years, our rules have evolved to make the standard mortgage market more transparent and less hospitable to fraud and money laundering,” Calvery said. “But cash purchases present a more complex gap that we seek to address. These GTOs will produce valuable data that will assist law enforcement and inform our broader efforts to combat money laundering in the real estate sector.”

Under specific circumstances, the orders require certain underwriters to record and report to FinCEN the

beneficial ownership information of legal entities purchasing certain high-value residential real estate without external financing. A beneficial owner is an individual or entity who directly or indirectly owns 25 percent or more of the equity interest in the legal entity. FinCEN will provide the information to law enforcement investigators through its database.

It’s important to know that FinCEN will not make the ownership interest public. The celebrity or high-profile personality will theoretically be able to retain anonymity when making legal purchases. This was a concern for Nancy Farrell, president of Venture Title Agency in New York.

“To put it in simple terms, I’d be concerned if I received a letter from the government. And I could expect my office to start getting calls based on any letters received by a purchasing entity,” she said.

If the purchase involved in the covered transaction is a limited liability company, the underwriter must provide the name, address and taxpayer identification number of all its members. Businesses must report any covered transaction within 30 days after settlement or closing.

Additionally, covered title companies must retain all records relating to compliance with the order for five years, store the records so they are accessible within a reasonable period of time and make the data available to FinCEN or other law enforcement or regulatory agencies, upon request.

There are violations for not complying with a GTO. Penalties can be assessed any time within six years from the date of the transaction. Civil actions may be commenced within two years of the date of the penalty or criminal conviction.

Collection of Information

Information needed for the report can be obtained directly from the purchaser and any of the beneficial owners or by relying on information provided by the real estate agent or attorney involved in the deal. In past GTOs, companies have used questionnaires and affidavits as tools to collect and report information.

ALTA is working with the underwriters involved in the GTO in developing a standard format to collect and report the data. Information needed to complete form 8300 cannot be withheld due to attorney-client privilege.

In the case *United States v. Goldberger & Dublin, P.C.*, the court held that absent special circumstances, attorneys were required to disclose client information on Forms 8300. Additionally, the court held in *United States v. Leventhal* that state bar ethical rules do not constitute a “special circumstance” that would protect clients’ names and fee arrangements from disclosure.

ALTA Asks for Clarification

ALTA is actively assisting our members to comply with these reporting requirements.

“ALTA looks forward to continuing its work with FinCEN as members implement the order to help prevent money laundering schemes and the illegal purchase of real estate in the United States,” said Michelle Korsmo, ALTA’s chief executive officer. “As the independent third-party at the closing table, ALTA members work to safeguard real estate transactions for millions of Americans every year. Our work with FinCEN underscores ALTA members’ commitment to providing a compliant real estate settlement experience.”

In January, ALTA submitted a letter to FinCEN’s director asking for clarifications on several points to promote consistency in reporting and to help the industry better understand which transactions are covered by the order.

- ALTA proposes FinCEN adopt RESPA’s definition for “residential.” Industry familiarity with the definitions and regulatory scheme provided by RESPA will help

title companies identify covered transactions.

- ALTA recommends that the definition of “Legal Entity” exclude trusts. The order defines the term “Legal Entity” as a “corporation, limited liability company, partnership or other similar business entity.” According to the letter, ALTA said that unlike a corporation, a trust is not considered a separate legal entity under the common law of various states. Adopting this recommendation will provide a definition consistent with those used by the industry for the purposes of determining how to effectively transfer title.
- ALTA also suggests that the definition of “agents” refer only to people or entities with a contractual relationship with the covered title company. State insurance laws require insurers to appoint agents via a specific written contract or authorization. This will help the insurers consistently determine which business partners they must educate and supervise to comply.
- ALTA asked that the record

Moving Dirty Money from a Taiwanese Fruit Basket to a Condo in New York

According to federal prosecutors, this money-laundering example that started in 2004 only took eight steps.

1. The Bribe

In 2004, five or six fruit boxes filled with a \$6 million cash bribe were sent to Wu Sue-Jen, the First Lady of Taiwan, to help a company involved in a contested acquisition.

2. The Way Station

The money was stored in a bank vault in Taipei, then stuffed into suitcases and moved into the basement of an executive involved in the merger.

3. The Offshore Shell

Wu’s operatives set up a shell company in the British Virgin Islands, Asian Piston Investment Ltd., listing front men as its officers.

4. The Swap

The executive pocketed some of the cash in his basement, then moved overseas money of his own into a Hong Kong bank account controlled by Asian Piston.

5. The Swiss Bank

Cash from the Hong Kong account was wired into a Swiss account controlled by another British Virgin Islands company, Avallo Ltd. Avalo’s owner: Wu’s daughter-in-law.

ALTA CEO Michelle Korsmo on NPR

retention period be consistent with state requirements.

Following a meeting with FinCEN staff, the department seemed amenable to all of ALTA's concerns except for the recommendation of determining when a purchase is made, at least in part, using a monetary instrument. ALTA suggested the order not cover transactions when only a minimal amount of the transaction price is paid via a monetary instrument. ALTA believes the *de minimis* threshold should be the current \$10,000 requirement for filing a currency transaction report under current Internal Revenue Service (IRS) and FinCEN regulations. Under state real estate settlement laws or industry practice, settlement agents require collected and settled funds for the closing of a real estate transaction. This process traditionally requires the transmission of settlement funds via wire transfers, which are not considered monetary instruments under the order. However, in some instances a minimal amount of the purchase price may be held by a third party (such as the real estate agent holding

an earnest money deposit) or a service connected with the transaction may be paid for outside the closing. In these situations, a title insurer could be unaware that a specific transaction is covered by the order.

"We urge FinCEN to use a reasonable and good-faith test for determining insurers' compliance with this order," Korsmo wrote in the letter. "We believe the clarifications requested and joint education with the insurer and FinCEN should ensure that all covered transactions that the insurer is aware of will be reported; however, even with the best efforts of title insurers, there may be transactions of which the insurer is not made aware."

To aid compliance, title professionals are encouraged to have a better understanding of the types of customers they do business with. Real estate agents and attorneys should be resources to help gather information about corporate entities purchasing

real estate. It should be noted that the order is not meant to prevent closings from happening. It is meant to allow the Treasury to collect information about these transactions. ALTA is working with underwriters and the National Association of Realtors to develop a standard form to collect information for a covered transaction. FinCEN is expected to provide a FAQ to help industry participants understand what's required.

FinCEN said title insurance companies play a central role in real estate transactions and can provide valuable information about potential illegal activities.

"FinCEN appreciates the assistance and cooperation of the title insurance companies and the American Land Title Association in protecting the real estate markets from abuse by illicit actors," FinCEN said in a release.

Expecting title companies to be able to identify when a criminal

6. The Middle Man in Miami

Money was then wired to a trust account in Florida linked to Stefan Seuss, a wealth advisor there.

7. The Front Company

Seuss created a New York firm, West 28th Street LLC, owned by Avallo Ltd.

8. The Chelsea Condo

On May 29, 2008, the LLC, with funds from the trust account, purchased a \$1.575 million apartment in the Onyx on West 28th St. in Manhattan, N.Y.

The Fallout

U.S. authorities seized the apartment amid investigations in Taiwan that landed the former First Couple in prison. In 2013, the property was auctioned for \$1.5 million. As part of a settlement of the litigation, \$225,000 was given to Avallo Ltd.

buys a mansion through a string of shell companies may be a reach, but Korsmo said the industry will give the government the information it can collect. It can become difficult to identify ownership when LLCs are layered on top of others. If a purchasing legal entity is owned by a series of other legal entities, the GTOs require the reporting of information about the beneficial owners of any of the legal entities in the series.

Thomas Tafuri, counsel and co-owner of Regal Title Agency in New York and chair of the Land Records Committee of the New York State Land Title Association, understands the point of the order but believes this is “a good example of government overreaching in its quest to nationalize everything.”

“We’ll do what the government tells us to do in an effort to curb money laundering, but how far down the LLC trail do we have to search?” Tafuri asked. “The New York City Register’s Office already requires that LLCs provide the names of their members. If members of the LLCs are LLCs or corporations, we stop. That’s what’s required for transfer tax purposes.”

Tafuri said the orders won’t have any impact on deals involving co-ops in New York because these transactions typically don’t include title insurance.

In addition, the requirements for only certain underwriters to provide the information for covered transactions could shift market share to underwriters not required to comply with the order creating an unfair competitive advantage.

“If an agent writes for a bunch of underwriters, they could just opt to send the deal to an underwriter that didn’t receive a GTO,” Tafuri said.

He added that it’s a noble cause, but another layer of compliance for title professionals to contend with. “We just got licensed in the state in 2014, we have to deal with TRID, we started collecting sales tax on searches that we never had to do prior to 2010, and now this. All this extra work requires labor. It doesn’t happen in a vacuum,” Tafuri said. “And why is it just Manhattan and Miami? Why does Los Angeles get a pass? Maybe they don’t want to offend their Hollywood friends. I wouldn’t be surprised if FinCEN expands these orders to other areas.”

Farrell of Venture Title voiced the same concerns, adding that title professionals will need to make sure their employees understand what’s required if they receive an order that’s within FinCEN’s covered transaction parameters.

“They are asking us to play policeman,” she said. “We do make sure things are done—to the best of our ability and resources—to transfer the property legally. And we do search out information on these entities as much as we can based on what’s available to us. You become comfortable in what you have to do for a deal, and this will be another item for title professionals to flag in a file and remember to collect the data if needed. It’s adding another step, which ultimately takes more time.” ■



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Managed Disbursement Is a Growing Trend in the Settlement Arena

Several Viable Options Available in the Marketplace

BY MICHAEL HOLDEN

The Consumer Financial Protection Bureau (CFPB) issued the “third-party service provider” bulletin to lenders on April 13, 2012, and the title and settlement industry gasped. Suddenly, the sky was falling and industry professionals began a public discussion about the future of the small title agent. Would small agents be able to compete in a new environment where lenders were seeking better oversight and control over their title and settlement providers? Would small agents be able to compete with underwriter and large multistate agents for business? Would lenders demand a centralized disbursing model where the underwriter controlled the funds for each closing?

Fortunately, with a great deal of work and input from the lending community, the American Land Title Association (ALTA) developed its “Title Insurance and Settlement Company Best Practices.” This framework laid out the compliance areas a title agency would need to

implement to be in a position to provide lenders with the confidence to continue to do business with that agency. With much progress being made in implementing the Best Practices, one area of compliance is still proving extremely difficult for small agencies — pillar No. 2 which addresses escrow accounting controls.

This pillar requires the management of an escrow account and timely reconciliations. Daily balancing, segregation of duties among personnel, positive pay systems with banks and personnel who perform escrow functions now needing background checks are all significant increases in expense and time for the small title agency. The cost to add new software for daily reconciliation and the cost of personnel needed to manage positive pay exceptions could mean unsustainable expense for the average title agency. On top of this, agencies are likely to need certification from independent parties with respect to compliance with this pillar. The overall cost to comply with all areas

of escrow accounting controls for small agencies has run as high as \$40,000 per year.

The Advent of Managed Disbursement

Necessity is the mother of invention. Shortly after the CFPB’s “service provider” bulletin was issued, two companies started thinking about how they could reinvent the settlement process and become a solution for ALTA Best Practice No. 2 compliance. They each came up with a different approach to solving this area of compliance, and both are poised to change the way title insurance and settlement agents do their business.

One of these companies is PCN Network, which is a member of ALTA’s Elite Provider program. PCN introduced a service called SafeEscrow, which is built on a proprietary patent-pending technology that centralizes controls. This makes it look like the agent is disbursing locally. This disbursing model removes the need for an escrow account from the title insurance and settlement agent. The title agent controls the process, using SafeEscrow’s online portal to input disbursements, receipts and payoffs. SafeEscrow confirms receipt of funds, clears those funds, and when the title agent approves the disbursement, Safe Escrow enables the title agent to print checks for the closing directly from the SafeEscrow portal. When the title agent confirms the closing

is completed by releasing funds in the system, wire payoffs are sent directly to lenders and positive pay is submitted, making the checks valid. SafeEscrow ensures that all control structures, daily bank reconciliations, escheat management and all other escrow account compliance requirements to meet ALTA Best Practices are in place.

Another company to develop a disbursing solution is Entrust Solutions. With its Nexus program, a small title agent can move a significant portion of its back-office production to Entrust Solutions. Unlike the SafeEscrow system, which only manages disbursements, Entrust manages the entire title process. They produce the commitment, policy and CPL, they review and approve the Closing Disclosure, and they receive and disburse funds. The Nexus agent becomes the focal point to the customer by providing:

- the search and title exam
- curative title work;
- correspondence with the lender and delivery of the commitment, CPL, wire instructions and preliminary Closing Disclosure
- loan closing and signing service
- recording
- packaging and submission of the final closing package. Entrust provides the back office work to produce the file, disburse the funds and issue the policy.

The impact on the title agency for either of these programs is positive. Michigan title agent Erika Weichel of Michigan Investment Title began using SafeEscrow in 2014. She now processes over 100 closings a month on its system. The charge for the SafeEscrow service is passed on to the consumer and the cost of maintaining an escrow account is eliminated.

Compare the business models of a traditional title agent to that of the Nexus program

Traditional Title Agent

Gross sales \$250,000
 (\$175K title premiums + \$75K closing fees)

Expenses:

Underwriter \$52,500
 Salaries (agent plus two employees) \$120,000
 Rent, office expense \$35,000
 Other expenses \$20,000
 E&O, Bonds, Insurance. \$3,600
 NET profit \$18,900

(assumes agent pays themselves a salary of \$40,000 a year)

Total earnings = \$58,900

NEXUS Title Agent

Gross Sales \$250,000
 (\$175K title premiums + \$75K closing fees)

Percentage from each premium to agent – 35%
 Percentage from each closing fee – 50%
 Net premium income Nexus program = \$62,250
 Net closing income Nexus program = 37,500
 Total Income = 99,750

Expenses:

Office (executive shared office) . . . \$6,000
 E&O, Bonds, Insurance. \$3,600
 Other expenses \$4,000

NET profit/Salary for title agent . . \$86,150
In states where a fee is paid separate for the search, the agent usually can earn that fee as well.

Total earnings = \$86,150

“There is no way I could maintain an escrow account, the bonds, a staff person to reconcile and the software to balance daily for what we pay SafeEscrow for each disbursement,” she said. “The cost difference for my E&O policy was a savings of 70 percent when priced with my company not maintaining an escrow account.”

Tom Frunzi, senior vice president of business development at SafeEscrow, said his company provides agents with the ability to control their own agency, do the title and curative work and just outsource the escrow management function.

“SafeEscrow is the only available technology where an agent can use a technology to create a disbursement, review and approve the disbursement and print their checks at the table.

No bank accounts, no reconciliations, no compliance certification required from agent,” he said.

The Nexus program from Entrust Solutions provides a different solution for agents than SafeEscrow. Closer to the property and casualty model of insurance than a traditional title agency, the Nexus program allows an agent to become significantly more profitable in a short period of time.

“At first, I was skeptical about working with Entrust and whether it would be a smooth process or not,” said Rosemary Plasencia of Allied Title and Trust LLC in Miami. “However, for the past six months that I have been working with them, I have no complaints and I do see a value in their service. They are prompt and very easy to work with.”

The Nexus program operates under the idea that a sole practitioner or small agency can greatly reduce overhead and become more profitable to operate as a home office or as a small location in an executive office suite. Based on the example of profit and expense below, what agent would not take the opportunity to earn significantly more income by operating as a home/small business?

“The Nexus Program gives any attorney or agent, regardless of size, the opportunity to conduct settlements and issue policies with limited risk,” said Jonathan Yasko, president of Entrust Solutions. “The potential of increased net profitability, while gross revenue remains unchanged, has even large agents joining the Nexus Program. This will allow you to work smarter, not harder.”

Safeguarding Escrow Trust Accounts

cost of E&O insurance up to 70 percent for many agents. The Nexus program from EnTrust also shifts liability away from the title agent. In the EnTrust model, the potential savings on E&O insurance will depend on what services the title agent provides.

years we will see the emergence of a property and casualty model for the title insurance industry where the small agent monetizes the relationships while title production and the underwriting is handled by the underwriter.” Although Stone imagined an underwriter-centered model to control the disbursements, we can see that high-quality solutions are being brought to the marketplace that expand his idea to a network of specialized service providers.

Options exist for small agencies that want to maintain a full-service shop with all functions except disbursing on site.

For those agents who are feeling the pressure from shrinking margins and need a new business model that includes managed disbursement, there are viable alternatives for them as well. ■

Options exist for small agencies that want to maintain a full-service shop with all functions except disbursing on site.

Reducing Title Agent Liability

Considering the higher cost for E&O coverage with the risk of cyber breaches and unauthorized access, escrow accounts are fraught with liability. Both the SafeEscrow and Nexus model shift the liability to the manager of the disbursements. In the case of SafeEscrow, PCN Network maintains all the liability for the escrow account—even the liability from a cyber breach. This shift in liability has reduced the

Future Bright for Small Title Agents

In 2012, there was a well-founded fear that the extinction of the small title agent had begun. Underwriters were discussing ways to eliminate the agent from the process.

As far back as April 2011, Pat Stone, chief executive officer of Oregon-based Williston Financial Group, the parent company of WFG Title Insurance Co., said: “... in five



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The Value of Electronic Verification of Reconciliation

Integrating Banking Data with Settlement Account Software Helps Provide ‘Full Story’

When ALTA published its “Title Insurance and Settlement Company Best Practices,” it indicated that the seven pillars were meant to be guidelines to help the industry meet market requirements and protect consumers. Although these guidelines are voluntary, many in the settlement services industry meet and exceed these benchmarks in order to ensure compliance with regulatory and industry standards.

One of ALTA’s most critical Best Practice standards is Pillar No. 2:

Adopt and maintain appropriate written procedures and controls for Escrow Trust Accounts allowing for electronic verification of reconciliation.

Something agents may not realize is that the key words contained in Pillar No. 2 are “electronic verification of reconciliation.” The focus of this pillar is that it is absolutely critical to safeguard client funds. The loss of client funds could mean the closure of your business, and because of the increase in online scams, it is becoming more difficult

to protect your accounts. According to ALTA, one of the ways to ensure compliance with Pillar No. 2, and the protection of your clients’ funds, is to make certain your escrow trust accounts are reconciled on a daily basis. In addition, three-way reconciliation should be performed at least once a month. Most importantly, the results of the reconciliations should be accessible for electronic verification.

Defining Reconciliation

Reconciliation is a way to compare receipts and disbursements to make sure they are consistent with each other. This is an important way to identify any escrow account problems—whether they are due to an error or nefarious causes, such as theft, fraud or compliance violations. The idea is similar to balancing your personal checkbook each month—you are looking for errors or problems in your account that need to be fixed. If reconciliation shows that your escrow account is short funds, you

then take steps to find out where the funds have gone and why. It is important that the reconciliation of accounts is performed by someone who does not have disbursement authority over the account. This is because escrow account theft is not only conducted by cyber thieves, who have no relationship with the company. It can also be done by employees who have access to accounts. This is why reconciliation is so crucial—thrift can come from a variety of places and it is sometimes very difficult to detect.

Reconciliation ensures escrow account accuracy and allows for detection of irregularities so that you can rectify them quickly. Three-way reconciliation is similar but more critical as it compares the bank statement, checkbook and escrow trial balance to ensure consistency. If, after reconciliation, the numbers do not pan out, you know that you need to investigate and correct the problem. The problem could turn out to be an error in the reconciliation itself, but could also reveal evidence of a security breach, or even fraud.

It is also critical to make sure that evidence of your reconciliation is reliable and accessible electronically. What this means is that the complete reconciliation should be available in an electronic format so you (and others) can verify it, access it, and keep it for your own records.

“Electronic verification of reconciliation is an

important element within the recommendations of ALTA's Best Practices Pillar No. 2," said Dick Reass, founder and chief executive officer of RynohLive. "Many times, companies do not understand how critical this element is or why it is so essential, and, unfortunately, electronic verification of reconciliation is frequently misunderstood."

It is often thought that a PDF version of an agent's reconciliation is sufficient to comply with

The concept is best understood by looking at the verification process for passports and visas in the United States. No longer is it a matter of physically reviewing the passport or visa that is being presented. It is now a process of electronically scanning the item and comparing it with the underlying data held by the Department of Homeland Security.

So, for example, providing a PDF version of the reconciliation for verification is comparable to providing a hard copy of a passport

background check. You need to verify that the information is accurate by searching for more data that can provide you with the individual's full story.

Underwriters are also looking for access to the full story. They need more than just a paper copy of the reconciliation. They need the underlining data in order to complete a true and accurate verification.

Finding a way to provide the correct information to your underwriter does not have to be difficult. One option in the market is provided by RynohLive, which provides daily three-way reconciliation of escrow accounts. Moreover, Rynoh has the ability to verify reconciliation electronically because it integrates the bank data with the agent's escrow accounting software data. More specifically, RynohLive connects to your banking data (providing READ ONLY access) and your settlement software in a secure, cloud-based environment and then automatically generates reports that allow you to reconcile your accounts on a daily basis. Going back to the passport example, it is clear why integrating banking data with the settlement account software is so important.

"RynohLive provides the underwriter with more than an emailed piece of paper," Reass said. "It allows for true electronic verification of reconciliation because it assimilates the underlying data. In such a competitive industry, it is important not only to meet, but also to exceed, market standards. It is critical to be at the top of your game, and one way to do that is to ensure you are reconciling and verifying your accounts with accuracy." ■

Underwriters are also looking for access to the full story. They need more than just a paper copy of the reconciliation.

ALTA's Best Practices. However, that is not the case. It is vital that agents provide proof of electronic verification of their reconciliation or proof of the underlying data that comprise the reconciliation.

"Sending a copy of your monthly reconciliation to an underwriter by email is not electronic verification of your reconciliation, nor is it providing electronic access to your underwriter," Reass said. "Emailing is simply sending a piece of paper in electronic format. Only by providing the underwriter access into your accounting system, and the corresponding transactional data processed by your bank, can the underwriter truly electronically verify that the reconciliation being presented is accurate."

You are probably wondering why sending a PDF version of the reconciliation is not sufficient?

for verification. It provides the surface information but does not get to the underlying data. Scanning the passport allows for access to in-depth information and provides a more thorough verification. It is the same idea with reconciliations—getting to the underlying data is critical for complete, accurate verification.

Another example of electronic verification comes from companies that conduct security and background checks for businesses. These companies verify a person's identification by utilizing government databases in order to cross-check background information and search for warning signs that the person is not who he says he is. In other words, an individual can provide you with his identification, resume and past work information, but more is needed for a thorough



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Rizolv® allows you to promptly handle and resolve customer issues by capturing complaints and assigning them a single point of contact. Up and running in minutes, Rizolv helps you make customer care your highest priority.

New 2016 ALTA/NSPS Land Title Survey Standards Effective Feb. 23

Nearly All Changes Assist Surveyors, While Not Diminishing the Value of Title Insurance

BY GARY KENT

Two years of concentrated effort by their committees of the American Land Title Association and National Society of Professional Surveyors culminated in the adoption of the new 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys. The new standards go into effect Feb. 23. The standards can be found at www.alta.org/forms (under “Most Requested”). The following is a brief overview of what title professionals and surveyors will likely see as the most significant changes.

General Comments

The title of the standards has changed to “ALTA/NSPS” from “ALTA/ACSM” in order to acknowledge the merger of ACSM and NSPS. The committees also made wording consistent throughout the standards (with one exception) when referring to the surveyor’s

obligation to locate certain objects and features (“*observed in the process of conducting the fieldwork*”).

Section 2 – Request for Survey

The list of atypical properties or interests in real property that can be the subject of an ALTA/NSPS Land Title Survey has been expanded so that it clearly includes easements.

Section 4 – Records Research

In recognition of the purpose of an ALTA/NSPS Land Title Survey, the surveyor must be provided with the most recent title commitment. However, if a title commitment is not made available, title evidence satisfactory to the title insurer—which might include an abstract of title, a title opinion, an old title policy or one of the various other types of products that title companies produce—is acceptable.

Some of the documents referred to in the 2011 (and earlier) standards as “Record Documents” were not actually documents recorded in the office of public record, thus the 2016 standards have abandoned the term “Record Documents” throughout, in favor of merely referencing those documents that are “*to be provided to the surveyor.*”

In several sections of the standards, content previously presented as lists in paragraph form has been restructured into annotated lists for ease of reading. One example of this is in Section 4. This list of documents to be provided to the surveyor now includes “*records established under state statutes for the purpose of imparting constructive notice of matters relating to real property (public records)*” (e.g., deeds, copies of easements), and any unrecorded documents that affect the property and to which the client wishes the surveyor make reference.

The most important change to Section 4 is the last paragraph. All versions of the standards—dating back to 1962—avoided outlining exactly who was responsible for obtaining other necessary documents. That stance likely had its origins in trying to adapt widely varying state standards and standards of practice to a national standard. Regardless of the reason, it was past time for the standards to address the issue.

The 2016 standards direct the surveyor to look to his or her jurisdictional standards, whether statutory (as they are in a few states)

or administrative/regulatory (as they are in most states) when either

- the documents that were to be provided by virtue of Section 4 are not forthcoming, or
- the surveyor needs other documents to complete the survey.

For those states that have no jurisdictional standards, (California and a few others) surveyors need to be familiar with the normal standard of care as referred to in Section 3.D. Given the variations across the country (and the fact that surveyors must comply with the laws and the normal standard of care in their areas), the committees felt this was the most logical and viable approach to this.

Section 5 – Fieldwork

The introductory sentences to Section 5 address precision when locating the various features in the field. This issue had also been ignored since 1962 and, again, it was past time to address it. The degree of precision pursuant to the 2016 standards is to be based on the surveyor’s professional judgment when taking into account “(a) *the planned use of the property, if reported in writing to the surveyor by the client, lender, or insurer, or (b) the existing use, if the planned use is not so reported*”

A number of fairly minor but important modifications were made to Section 5; however, one major change is in subsection 5.E.iv. Essentially, what used to be Table A Item 11(a) has now been made a required part of an ALTA/NSPS Land Title Survey.

This will eliminate the conundrum caused by the dynamic between former Table A item 11(a) (evidence of utilities) and Sections 5.E.i. and ii. (observed evidence of easements) in the 2011 standards. If Table A item 11a (or 11b) was *not* checked,

the surveyor did not need to locate any observed evidence of utilities. However, if that utility evidence fell within an easement for which documentation was provided, or if that utility evidence represented the possibility of a prescriptive easement, the evidence did need to be located. Thus, there was confusion over whether or not utility evidence needed to be located; and if the wrong decision was made in that regard, there could be a very serious problem for the surveyor. (Readers who have

attended one of the author’s ALTA/ACSM educational programs have heard mention of a million-dollar lawsuit against a surveyor revolving around this very issue.)

Section 6 – Plat or Map

Section 6 now addresses the issue of dimensioning—leaving it to the judgment of the surveyor based on the planned use of the property as reported (or not). When the surveyor decides it is appropriate to prepare a new description based on the results of

The Work of Two Committees

A debt of gratitude is owed to members of the ALTA and NSPS committees who participated in the process and to others who offered suggestions and comments. The joint committee was comprised of the ALTA Liaison Committee with the NSPS and the NSPS Subcommittee on the ALTA/NSPS Standards. The following participated in the joint committee work:

Chair

Gary Kent, *Schneider Corp.*, Indianapolis

ALTA Members

Richard F. Bales, *Chicago Title*, Aurora, Ill.

Daneece M. Berge, *Old Republic National Title Insurance Company*, Plano, Texas

Todd D. D’Amico PLS, *First American Mortgage Solutions LLC*, Norman, Okla.

Justin L. Earley, *First American Title Insurance Company*, Santa Ana, Calif.

James L. Gosdin, *Stewart Title Guaranty Company*, Houston

Paul J. McNamara, *Pabian & Russell LLC*, Boston

Michael F. Waiwood, *North American Title Insurance Company*, Elyria, Ohio

Jack R. Zachow, *Old Republic National Title Insurance Company*, Tampa, Fla.

NSPS Members

Judy G. Beale LS, *Woolpert*, Chesapeake, Va.

Paul Burn PLS, *GCW Engineers Surveyors*, Las Vegas

Todd E. Rakstad PLS, SR/WA, *Salt River Project*, Phoenix

Malcolm Shaw, *Erlandsen Crowell & Shaw, LLP*, New Hyde Park, N.Y.

Curtis Sumner LS, *National Society of Professional Surveyors*, Gaithersburg, Md.

The joint committee notes with sadness the untimely passing of NSPS Member Advisor Malcolm Shaw, an experienced surveyor from New York and a valued contributor to the 2016 review and development process.

Questions about the 2016 standards may be directed to ALTA staff liaison Kelly Romeo at kromeo@alta.org.

his or her survey, Section 6.B.ii. now requires a note explaining how the new description relates to the record description (*i.e.*, if it describes the same property and, if not, how it differs).

Subsection 5.E.ii. requires a summary of the plottable easements and servitudes listed in Schedule B2 of the title commitment, and a statement as to whether or not each item is shown. This will help eliminate unnecessary calls to surveyors from reviewers of the survey who have trouble interpreting or finding certain items. If a Table A item has been negotiated or qualified in a manner that differs from how it was spelled out in the standards, Section 6.D.g. requires an explanation. It also requires that any additional Table A items negotiated with the client all be identified as item 21; if there are multiple additional items, they shall be identified as 21(a), 21(b), etc.

Table A

Table A Item 6 now requires that a report or letter containing the zoning information that the client or lender wants identified on the plat/map *be provided to the surveyor by the client*. This addresses the problem identified after adoption of the 2011 standards whereby title companies were to provide this information, but—due primarily to liability issues—they often declined to do so. Significantly, Item 6(b) also relieves the surveyor from having to graphically depict setback lines if doing so requires an interpretation on the part of the surveyor.

Item 8 now includes “*substantial areas of refuse*,” which was necessary in exchange for the elimination of former Table A Item 18 (“*Observed evidence of site use as a solid waste dump, sump or sanitary landfill*”).

Item 11 (utilities) has been a difficult item for surveyors since day one and it continues to become even more problematic over time. Main concerns revolve around client expectations, difficulty in getting responses to one-call locate requests and difficulty in obtaining plans. All of this revolves around the question of who is supposed to order all of that in the first place. Keeping in mind that what was 11(a) in 2011 has, in 2016, been included in 5.E.iv., Item 11 now only involves what had been 11(b)—what might be referred to as a “*utility investigation*.”

The responsibility for trying to obtain utility plans and for ordering utility locate services now clearly lies with the surveyor. However, there is nothing whatsoever to prevent surveyors from qualifying or spelling out what they will and will not do in that regard in their contract (yet another reason to use a written contract). Also, the wording in the “Note” following Item 11 has been modified and expanded to more accurately describe what surveyors may actually be able to accomplish with regard to utilities. A similar note could—and probably should—be part of the surveyor’s contract and should also appear on the face of the plat or map with information related to the actual results of the specific investigation.

One of the biggest problems that came out of the 2011 standards was the pervasive lack of understanding of Item 18 (wetlands) on the part of clients, lenders and, to some extent, surveyors. For 2016, this item now says exactly what it should say (and what was intended in 2011), and the new wording should make it clear that surveyors are not responsible for delineating wetlands.

Former Table A Item 18 (evidence of site use as a solid waste dump, sump or sanitary landfill) has been eliminated. Such matters are properly the subject of a Phase One Environmental Assessment, not a survey.

What had been Item 19(b) in the 2011 standards has also been eliminated because it was determined that setting monuments on someone else’s property could be problematic and could constitute a trespass.

Item 20 now states that information related to professional liability insurance shall not appear on the face of the plat or map. This is in response to those attorneys who have sometimes made the outrageous demand that surveyors identify the extent of their professional liability coverage on the face of the plat/map.

Summary

Each modification in the 2016 standards has its own purpose. There are many more changes besides those outlined above. Virtually every change will either directly or indirectly assist surveyors, while importantly, not diminishing the value of the product for the ultimate user—title insurers. As has been the case ever since the author became involved with the standards in 1988, the NSPS and ALTA committees work closely to maintain a standard that will result in surveys that meet the needs of the title industry, while keeping the requirements clear, realistic and achievable for surveyors. ■



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Professional Surveyors. He can be reached at gkent@schneidercorp.com.



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OFAC Updates SDN and Blocked Persons List

Title and Settlement Agents Should Scan List on Regular Basis to Ensure Compliance

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) in December updated its Specially Designated Nationals (SDNs) list to identify additional persons and entities with which U.S. citizens and permanent residents are prohibited from doing business and whose assets or interests in assets must be frozen if they come within the jurisdiction of the U.S. Title and settlement agents are reminded they need to be in compliance with requirements against doing business with targeted foreign countries, terrorists and others identified by OFAC.

OFAC's update to the SDN list names 34 individuals and entities under Ukraine-related sanctions and authorities. To ensure compliance with OFAC's regulations, industry professionals should scan customers against the SDN list on a regular basis. Exclusive to members, ALTA provides a search interface to the SDN list where members can log in and search the list conveniently.

Many settlement and title agents are unsure how to proceed when their compliance software indicates a "match" against the SDN list. Before

a firm contacts the hotline, OFAC recommends that it consider the following questions as part of a basic due-diligence program:

- Is your software or data service provider only screening against the SDN list or list of targeted countries?
- Evaluate the quality of your match: Do the names match in full, or do they simply entail a partial match of very common names? Is the name of an individual matching against the name of a vessel, company or other non-individual?
- How does the address/biographical information of the party with whom you are dealing compare to the individual or entity on the SDN list? If the address and/or biographical information matches, but there is some variation in name spelling, you should contact OFAC as foreign names may be transliterated into English in several different ways.
- If there are a number of similarities or if you have reason to believe you have a valid match, contact OFAC's Compliance Programs Division at 800-540-6322 for guidance.

Once a wire is flagged for OFAC review, it can't be cancelled or released

until all relevant information is provided. (Note: Providing a service to an SDN would constitute a violation of OFAC-administered sanctions regulations. In order to ensure compliance with U.S. sanctions, real estate settlement and title insurance providers should consult the SDN list prior to providing any service that would benefit an SDN.)

When a title company is the beneficiary of a wire, the sending bank must obtain the additional information from the originator of the wire transfer. The sending bank typically has a separate department reviewing OFAC requests. The sending bank must then pass the information to the receiving bank, which must send the information to its OFAC department for final approval before the wire can be released or credited to an escrow account. This could take two extra days from the time the wire was first flagged.

When a settlement or title company is the originator of a wire, the company must pass additional information to the sending bank upon request, which in turn will send it to its OFAC department. After the OFAC review and approval, the bank will then pass the information to the receiving bank, which will also send the information to its OFAC department for approval and release. This process can take up to two days to complete, even if the flagged name turns up as a false positive. ■

Former ALTA President Robert Dawson Passes Away

Robert Dawson, who served as ALTA's 1973-74 president, passed away Jan. 5 at the age of 92.

Dawson started his career in the title industry in March 1955 when he joined the Florida legal department of Lawyers Title Insurance Corp. In 1957, he moved to Winter Haven, Fla., to work in the company's state office. He was named Florida state manager in 1963.

In 1968, Dawson was promoted to executive vice president of Lawyers Title and was elected to its Board of Directors and Executive Committee. In 1973, he was appointed president and CEO of Lawyers Title and went on to lead the company for 17 years. Beloved and admired by employees and agents nationwide, he brought the company through a time of tremendous change and growth in the title insurance industry. Shortly after his retirement, Lawyers Title was spun off by Universal Corp. to its shareholders as Lawyers Title Corp.

Charlie Foster, who was appointed CEO of Lawyers Title after the spin-off, worked with Dawson for many years. He called Dawson "one of



the finest men I have known—a true gentleman, who set high standards in all he touched."

"It was a privilege to have worked for him—he set a steady course of leadership and knew how to do the right things the right way," added Foster, who served as ALTA's 1999-2000 president.

Roger Bell, ALTA's 1978-79 president, was appointed to serve as chair of the association's Abstractor's Section. He didn't have any direct contact with Dawson, but knew him from attending conventions and hearing him speak at meetings.

"He was certainly impressive from that perspective," Bell added. "He was smart, a real gentleman."

In addition to his involvement at ALTA, Dawson served one term as president of the Florida Land Title Association. Dawson served in the U.S. Navy during World War II and was in the first class to graduate from the Naval Aerial Navigation School in 1945 in Clinton, Okla.

FTC Consent Order Highlights Importance of Proper Email Encryption Standards

The Federal Trade Commission (FTC) recently issued a consent order against Henry Schein Practice Solutions, Inc., a software provider for dental practices, for allegedly marketing its software using deceptive assertions. The FTC fined Schein \$250,000 for alleged false marketing advertisements related to the level of encryption the company provided to protect patient health data.

Schein advertised that its software provided industry-standard encryption methods to protect sensitive patient information as required by the Health Insurance Portability and Accountability Act (HIPAA). However, the FTC alleged that Schein was aware that its software did not comport to the Advanced Encryption Standard, which the National Institute of Standards and Technology (NIST) recognizes as the industry standard that meets the regulatory data encryption obligations under HIPAA. By failing to meet the encryption standards identified by the NIST, Schein was found to have misled patients about the level

of protection its software provided. The significant fine the FTC assessed for Schein's deceptive marketing correlates with the type of data Schein was encrypting.

The primary lesson that title insurance and settlement companies should take from this consent order is the importance of clearly and accurately identifying encryption methods. When marketing software qualifications or security, it is better to be specific about what the software is capable of doing instead of using puffery or broad statements. Implying that the services meet certain regulatory standards may be seen as deceptive, as Schein's advertising was found by the FTC in this case.

ALTA's Best Practices require that title insurance and settlement companies encrypt electronically transmitted non-public personal information. The ALTA Best Practices also require companies to provide a copy of their privacy policy to customers and to alert customers if a security breach occurs as required by law. For more information, go to www.alta.org/bestpractices.

Timios Approved to Conduct Business in All California Counties

Timios Title, a subsidiary of Timios Inc., can now operate in every California county following the approved expansion of its license by the state's department of insurance.

"We are excited for the new expansion of our license, and continuing to build on the foundation of our California heritage that dates back over 125 years," said Richard Thomas, president of Timios Title.

Meanwhile, Timios National Corp. completed a merger into Timios Holdings Corp., a privately held company.

The officers and directors of Timios Holdings Corp. will be the same as under Timios National Corp. As a result of the merger, Timios National Corp. has been merged into Timios Holdings Corp. and is no longer a publicly traded company.

"We have been working for over a year on simplifying our corporate structure, while at the same time strengthening our financial position," said Trevor Stoffer, CEO of Timios Holdings. "We set some big goals at the start of 2015 and the management team has delivered on all of them."

Simplifile Expands E-recording in the Midwest

Simplifile's electronic recording service is now available in eight more Midwest counties, providing settlement agents with the ability to quickly and more cost effectively record documents with counties via the Internet. The available counties in the Midwest region include:

- DeWitt County, Ill.
- Brown County, Ind.

- Crawford County, Ind.
- Franklin County, Ind.
- Wexford County, Mich.
- Isanti County, Minn.
- Wood County, Ohio
- Forest County, Wis.

In addition to these counties, Simplifile customers can now e-record in more than 1,351 recording jurisdictions across the nation.



Title Midwest Grows Footprint with Acquisition

Title Midwest Inc., a Kansas-based company, has acquired the assets of the First American Title Company offices in Independence, Erie and Lawrence, Kan., as well as Richmond, Mo.

The Kansas offices will operate as part of Kansas Secured Title and Abstract Company. The Richmond office will become a part of Missouri Secured Title, according to John Stauffer, CEO of Title Midwest. Current employees of the acquired offices will become employees of the respective state companies.

"We are pleased First American Title Company has chosen Title Midwest to be a suitable purchaser

of these offices and are fortunate to add these offices and employees to our growing operations," Stauffer said. "These additions will enhance and strengthen our abilities to serve our current customer base in each of these areas and allow Kansas Secured Title and Missouri Secured Title to continue providing the excellent service its customers are accustomed to."

Title Midwest, Inc. has 52 office locations in Kansas, Missouri, Minnesota, Nebraska and Texas, with major stockholders residing in Topeka, Lawrence and Kansas City.

Conestoga Title Names HA&W as Trusted Partner for ALTA Best Practices Compliance

Conestoga Title Insurance Co. will offer its title agents cost-effective benchmarking, testing and reporting options to ALTA's "Title Insurance and Settlement Company Best Practices" through HA&W's ComplianceSuccess Program. The program offers independent third-party attestation using CPA professional standards.

"As an established name in the title industry,

Conestoga sought third-party compliance partners that too have a long history of providing high-quality, personalized service to clients," said John Nikolaus, president of Conestoga Title. "HA&W's ComplianceSuccess Program offers our clients some of the most sophisticated and effective tools available today to ensure compliance with ALTA Best Practices."

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A Week in D.C. Working for You

To say that ALTA got a running start to 2016 would be an understatement. Your association's leadership is focused on setting the pace for the year to protect the industry on several fronts. Little time was wasted as we got down to business shortly after the new year.

On Jan. 12, ALTA's Board of Governors met with Richard Cordray, the director of the Consumer Financial Protection Bureau, to discuss Know Before You Owe implementation and lender third-party oversight. Cordray, acknowledging that implementation was more difficult than he expected, was receptive to feedback on how the industry is adjusting to the new mortgage disclosures and closing process. We encouraged CFPB to provide public guidance, which we believe will accelerate implementation for all concerned. He seemed open to this idea, and ALTA is drafting a set of questions we can provide to the CFPB. During the meeting, we also discussed that the required disclosure of title premiums is confusing to consumers. We asked if the CFPB would consider additional comments to make this more workable for consumers and industry.

The conversation about third-party management was particularly engaging. We reminded him of the bureau's 2012 bulletin that reminds lenders they are liable for the violations of federal consumer financial laws by its third-party providers. We made the point—very clearly, in my view—that no consensus exists among lenders in regard to the steps a lender must take in order to meet its third-party oversight responsibilities. Everyone involved in the mortgage process needs to know what is required. We urged Cordray to provide more guidance, and asked him to think about whether ALTA Best Practices can play a role.

We also met with staff from the U.S. Department of the Treasury's Financial Crimes Enforcement Network to share concerns about the Treasury's Geographic Targeting Orders requiring several title insurance underwriters to identify the names of individuals involved in shell companies and other legal entities that make all-cash purchases for high-end residential real estate in Manhattan, N.Y., and Miami-Dade County, Fla. You can read more about the order in this edition's cover article.

Other meetings were held to help set the stage for 2016. ALTA Immediate Past President Diane Evans convened the newly formed ALTA Best Practices Executive Committee of the Best Practices Task Force. It is part of the new Best Practices governance structure. The committee is focused on ensuring the Best Practices are responsive to industry needs and remain a permanent part of the future landscape. Leaders of ALTA's TIPAC Committee also met in D.C. to discuss 2016 goals. Last year, TIPAC raised record-breaking contributions of \$475,000. Thank you to all who contributed.

The week closed with several meetings with congressional staff members to continue the discussion about Know Before You Owe implementation and other industry concerns. These were important meetings to reinforce the industry's commitment to serve as a resource to Congress.

It's nearly the start of state convention season. In fact, I spoke at the Alaska convention earlier this month. I hope to see you in March for ALTA's Business Strategies Conference or on the road sometime soon so I can personally share how ALTA is working for you.

— John Hollenbeck NTP, ALTA president



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