

March 2016

Official Publication of the
American Land Title Association

TitleNews

Vendor Liability: Managing Your Partners

Title and Settlement Companies Must Meet
Lender Requirements and Understand Importance
of Monitoring Downstream Providers



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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



Vendor Liability Webinar

The digital edition of TitleNews includes a recording of a webinar that addresses responsibilities when selecting fourth-party vendors and how title companies can manage their lender scorecards.

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

TitleNews

PUBLISHER
Michelle L. Korsmo

EDITOR IN CHIEF
Jeremy Yohe

COMMUNICATIONS
MANAGER
Shawn Sullivan

ASSOCIATION OFFICERS

PRESIDENT
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First American Title Insurance Co.
Santa Ana, CA

PRESIDENT-ELECT
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It's All About Accountability

As the mother of three daughters, many conversations in our household revolve around accountability. Sibling rivalry often leads to behavior that breaks house rules, but promoting a culture of accountability helps each child know that no matter who started an argument, everyone is responsible for their own behavior. It's a positive thing when rules and expectations are clear.

Accountability is equally important at work. It's critical to any company's success. Every employee—from interns to CEOs—is responsible for aiding in a business's achievements. Employees who work together toward the same overall goal help their workplace to become more accountable, and in turn make the business more productive and efficient.

In the book "The Five Dysfunctions of a Team," author Patrick Lencioni describes five pitfalls that prevent success. The first dysfunction is groups that don't act as a team, putting the success of the whole above their personal agenda. The dysfunction Lencioni revealed that made me think positively about the title and settlement industry is about avoidance of accountability. Lencioni says that without a clear plan of action, even the most focused people hesitate to hold their peers responsible for actions and behaviors that seem counterproductive to the team's goals. Without accountability, mediocrity flourishes and deliverable deadlines are missed, according to Lencioni. Companies that promote accountability identify potential problems quickly and ensure poor performers feel the pressure to improve.

Lencioni goes on to say that "the enemy of accountability is ambiguity." This really hit home for me because of the work ALTA members have done through "Title Insurance and Settlement Company Best Practices." Best Practices provide a bright-line blueprint to help lenders meet their regulatory requirements for third-party oversight. This edition's cover article discusses the importance of meeting lender requirements and the need of title and settlement providers to monitor the providers they work with as well. However, because of the ambiguity of the Consumer Financial Protection Bureau's third-party service provider bulletin, there's confusion in what an oversight program should include. This has resulted in inconsistent standards and ultimately weakens the CFPB's goal of helping consumers. As you'll read, ALTA has pressed the bureau to help bring clarity to the marketplace.

In the meantime, if the companies involved in the mortgage and real estate chain work together as a team and hold each other accountable, we will all reach our goal of helping consumers buy property with confidence.



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 Announces Priority Search Services as an Elite Provider

Priority Search Services recently was named to ALTA's Elite Provider program, which is comprised of premier service providers committed to offering comprehensive benefits to the title insurance and settlement services industry. Elite Providers promote the highest industry standards and provide effective solutions for ALTA members' critical needs.

Priority Search Services is a New Jersey municipal tax, utility, assessment and flood search company.

The company offers timely and accurate reports and the most knowledgeable and experienced customer service support. As an ALTA Elite Provider, Priority Search Services offers ALTA members a free flood search with the initial purchase of a municipal tax search. When the member accumulates 10 paid searches of any kind, they will receive two complimentary searches for future use.

For more information about the program or to apply, go to www.alta.org/elite.

Register for an ALTA Homebuyer Outreach Program

To help you learn how to educate consumers about the benefits of title insurance and promote your business by communicating directly with homebuyers, ALTA is partnering with several state land title associations including those in Florida, Minnesota, Missouri, New Jersey, New York and Pennsylvania to offer Homebuyer Outreach Program workshops. Upcoming events include:

- **Minnesota:** April 3, from

1:00-5:15 p.m., at *The Kelly Inn – St. Cloud*

- **New Jersey:** April 12 from 11:00 a.m.-3:15 p.m. at *the Hilton East Brunswick Hotel*

- **Florida:** April 19 from 11:00 a.m.-3:15 p.m. at *the Renaissance Fort Lauderdale Cruise Port Hotel*

- **Missouri:** Aug. 9 from 1:00 p.m.-5:15 p.m. at *the Sheraton Kansas City at Crown Center*

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

ALTA's Director of Public Affairs Honored as 2016 Top Innovator

Wayne Stanley, ALTA's director of public affairs, was named a 2016 Top Association and Non-profit Innovator by Trending 40, which is an editorial and events program that recognizes and celebrates the top talent in Washington, D.C.'s technology, legal, association and corporate communities.

Stanley, who joined ALTA in 2012, has been instrumental in developing and building membership of ALTA's Title Action Network, the premier grassroots organization promoting the land title insurance industry, and the development of ALTA's Homebuyer Outreach Program, which helps lead, educate and empower members to be proactive and communicate

the benefit of owner's title insurance. In addition, he speaks at many industry events, coordinates ALTA's social media content and handles media relations.

"Wayne's creativity, organization and tenacity are key reasons why we are able to consistently deliver quality information and products to our members," said Michelle Korsmo, ALTA's chief executive officer. "ALTA exists to provide advocacy, communications and education, and networking opportunities for our members, and Wayne continuously thinks of ways for us to deliver on our priorities. We are fortunate to have him on our staff and are thrilled that others recognize his talent and passion for innovation."

ALTA Member Benefit: Audio and Web Conferencing Discount

ALTA has partnered with InterCall, to provide special member-only 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.

To enroll, call 800-636-2377 from 8:00 a.m. to 6:00 p.m. EST, Monday-Friday, or go to <http://affinity.westuc.com/ALTA.htm>.

ALTA, American College of Real Estate Lawyers Develop International Transactions Library

ALTA's International Development Committee, in partnership with the American College of Real Estate Lawyers (ACREL), has developed an online reference tool for American real estate attorneys and title professionals handling international real estate transactions.

The International Transactions Library provides ALTA members with a crucial framework for approaching different customs and legal and financial systems in the major commercial centers around the world. The library's archives have expanded to include detailed information on the procedures, taxation, environmental regulation and government bodies involved in real estate transactions in over 20 countries.

New to the library:

1. Country Overview:

Introduction to the local land transfer process, providing a small explanation for each area of interest (taxation, environment, government bodies, etc.) and links to outside sources with more detailed information.

2. Questionnaire:

Foreign lawyers answer questions concerning local real estate practices.

3. Sample Documents:

Sample legal forms pertinent to acquiring real estate in each country.

Every country has its own language, culture, customs and legal and financial system within which a real estate transaction will occur. Accordingly, such transactions present unique challenges and risks for the client and real estate counsel that must be clearly understood and dealt with if the transactions are to be successfully and safely consummated, according to Mark Winter, chair of the International Development Committee. The challenges increase as one moves from the fully developed nations such as those in Western Europe, Canada and Japan to the so-called "emerging nations" such as China, Brazil, India and Russia.

The database contains information on several topics, including ownership restrictions, closings, taxes, title searches and escrow. The library also presents

related documents to provide the maximum amount of information. This allows for the American professional to effectively manage risk while engaging in international business.

As ALTA works to populate the International Transactions Library, we are looking for samples of documents used in land transactions abroad to enhance our members' understanding of their closing processes. Numerous ALTA members are involved in closings abroad and can contribute to our archives. These documents may include:

sample owner's and lender's policies used abroad, any memoranda pertaining to the procedure for land transactions, and your professional opinion on the importance or role of title in the country at hand. ALTA is not looking for examples or copies of transaction documents such as mortgages, leases, and security agreements. Any documents must contain non-personal information only.

If you'd like to help develop content in the library or provide input, contact Wayne Stanley, ALTA's director of public affairs, at wstanley@alta.org.

Countries in Progress for Library

- | | |
|-------------------|---------------------------------|
| 1. Australia | 13. Nigeria |
| 2. Bahamas | 14. Panama |
| 3. Brazil | 15. Poland |
| 4. Canada | 16. Portugal |
| 5. China | 17. Singapore |
| 6. Czech Republic | 18. Spain |
| 7. Germany | 19. Sweden |
| 8. Hungary | 20. United Kingdom |
| 9. India | 21. Argentina
(Buenos Aires) |
| 10. Italy | 22. Hong Kong |
| 11. Japan | 23. Russia (Moscow) |
| 12. Mexico | |

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

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ALTA's Final Business Strategies Conference

The 2016 Business Strategies Conference will provide education, networking and training to more than 500 title and settlement professionals in Indianapolis. This will mark the final year for Business Strategies Conference as ALTA has big plans to alter the event to continue to provide the best experience in the industry for networking and education. Join the conversation and help us celebrate the Business Strategies Conference on social media by using #ALTAbsc. Follow us on Twitter with @ALTAonline for the latest updates.

Homebuyer Outreach Program Training: Attend an Event Near You

We live in a complex, media-saturated world. Every day we face new competition, new regulations and increasing technology threats. Join us to learn ways to increase your business with the power of the Homebuyer Outreach Program. You'll learn about tools to communicate the benefits of owner's title insurance to homebuyers, establish the fundamentals and importance of

the Program with your employees, customize the Homebuyer Guide for your business & market. Register for a training near you at meetings.alta.org/hop.



Attend the Social Media Summit via Livestream!



ALTA's Social Media Summit is being offered via livestream for ALTA members for \$89 per office location. To purchase your livestream registration, visit meetings.alta.org/sms. The cost is \$150 for non-ALTA members. All livestream registrations for the Social Media Summit must be purchased by 5 p.m. ET, Monday, March 14. Questions? Email social@alta.org.

It's Back – March Title Madness!

Visit ALTA's social media pages March 15-April 4 to participate in our 2016 March Title Madness social media trivia contest! We'll post two industry trivia questions every other day on Facebook and Twitter.

Each individual that submits (via comments and tweets) a correct trivia answer will receive entry toward our grand prizes for #MarchTitleMadness.

Grand prize is a \$50 American Express gift card. The winner will be chosen via a lottery system of all individuals that submit correct answers. The more questions you answer, the more entries you can receive.

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Vendor Liability: Managing Your Partners

Title and Settlement Companies
Must Meet Lender Requirements
and Understand Importance of
Monitoring Downstream Providers

The so-called hidden tax imposed on business by regulatory compliance reached \$1.88 trillion, according to the 2015 annual report from the Competitive Enterprise Institute (CEI). In 2014, agencies issued 16 new regulations for every law—that's 3,554 new regulations compared to 224 new laws, according to the CEI.

“Federal environmental, safety and health and economic regulations affect the economy by hundreds of billions of dollars annually,” wrote Clyde Wayne Crews Jr., vice president at CEI. “Regulatory compliance costs borne by businesses will find their way into the prices that consumers pay, affect the wages workers earn, and lead to lower levels of growth and prosperity.” >>

By Jeremy Yohe



The tidal wave of regulations since the financial crisis resulted in the cost to originate a mortgage rising to nearly \$7,000 per loan last year, according to the Mortgage Bankers Association. Recently, LodeStar Software held a webinar on how the TILA-RESPA Integrated Disclosures (TRID) rule has affected closings. When asked, “Is your office more or less profitable since TRID?” 81 percent said they were less profitable.

While it wasn’t a regulation, the Consumer Financial Protection Bureau’s (CFPB) third-party service provider bulletin issued in 2012 generated repercussions in the marketplace still being felt nearly four years later.

“We continue to hear from lenders that they are confused about the bureau’s expectations for third-party management.”

The ripple effect doesn’t stop with the relationships with lenders for title professionals, there are responsibilities when selecting fourth-party service providers (couriers, paper shredding companies, abstractors, signing services, janitors and others). Title and settlement companies must evaluate these vendors and confirm they are following rules protecting non-public personal information (NPI) to ensure their lenders aren’t at risk.

The bulletin did not introduce any requirements not already imposed by other federal banking regulations, but ALTA and its leadership proactively worked with the mortgage

community to develop standards that lenders could use when managing title and settlement companies. Since the development of ALTA’s “Title Insurance and Settlement Company Best Practices,” numerous large and community-based lending institutions have incorporated the policies and procedures into their vendor management protocols.

“Despite this progress, we continue to hear from lenders that they are confused about the bureau’s expectations for third-party management,” Michelle Korsmo, ALTA’s chief executive officer, wrote in a letter to Patricia McClung, the CFPB’s assistant director of mortgage markets. “This lack of understanding has hindered the development of

robust vendor management programs for fear that they will not meet the bureau’s expectations.”

To help alleviate this confusion and provide necessary clarity to the marketplace, ALTA identified four actions the CFPB can take to help supervised entities and service providers better understand what constitutes a sufficient vendor management program. First, ALTA encourages the bureau to be aware of the types of vendor management programs that are currently being adopted in the marketplace. Lenders have imposed inconsistent standards for service providers—exposing vendors to multiple verification

processes—due to a lack of understanding of what the CFPB and other regulators expect in a vendor management program.

“The varying processes prove to be expensive for vendors to adopt, especially for the small title and settlement providers that make up 65 percent of the more than 20,000 settlement agents in the United States,” Korsmo said. “We encourage the bureau to update its examination questionnaire to include routine questions about a company’s vendor management plan for settlement agents.”

Second, ALTA recommends that the bureau provide public statements about good vendor management practices it sees in the marketplace. To help promote its goal of creating a self-policing and self-reporting industry, Korsmo said, the bureau should be more transparent about what types of standards are acceptable, such as Best Practices.

“By highlighting superior industry actions that accomplish the bureau’s goal of protecting consumers, the CFPB can influence the marketplace to adopt more thorough vendor management programs that meet its expectations,” Korsmo added.

Third, ALTA suggests the CFPB provide greater direction during the supervision process. ALTA believes the CFPB has the opportunity to guide the behavior of supervised entities by highlighting both compliant and questionable actions that these individual entities have taken. ALTA recommends that the bureau enhance its supervision manual to include more specific expectations around vendor management.

Finally, in many instances, title companies are not selected directly



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by the lender. Rather, the consumer selects the company. In these situations, the lender has minimal control over what settlement agent is employed to complete the closing transaction.

“The industry recommends that the CFPB clarify how these arrangements fit into the structure of the vendor management programs to help maintain the integrity of consumer choice,” Korsmo said.

CFPB: The Ultimate Umbrella

Donald O’Neill, executive vice president and chief compliance officer for WFG National Title Insurance Co., points out that the creation of the CFPB did not change regulations that existed prior to passage of the Dodd-Frank Act. Rather the Bureau

acts as an umbrella for the various agencies it has oversight over with the goal of “protecting the consumer and bringing supervision and accountability to the financial services industry.”

“In my view, the CFPB has oversight over just about every aspect of a consumer’s financial life, O’Neill said. “You have the authority of CFPB supervising banks and non banks, and then by extension, the downstream providers that are commonly referred to as third party service providers.”

Software Vendors Part of Third-party Chain

Highlighting the reach of the CFPB’s enforcement arm beyond directly regulated entities to third-

party providers, CFPB Director Richard Cordray last October voiced his frustration with loan origination system vendors and how prepared they were for implementation of the TILA-RESPA Integrated Disclosures rule.

Speaking during the Mortgage Bankers Association’s Annual Convention in San Diego, Cordray said that implementation had not gone as smoothly as he hoped, despite having nearly two years to prepare.

“Quite frankly, I have been disturbed by reports I have been hearing about the vendors on whom so many of you rely,” Cordray said. “Some (software) vendors performed poorly in getting their work done in a timely manner, and they unfairly put many of you on the spot with changes

“Netflix doesn’t really have or do anything that we can’t or don’t already do ourselves.”

- Blockbuster CEO, 2008

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at the last minute or even past the due date.”

He went on to say that the CFPB and other financial regulators “need to devote greater attention to the unsatisfactory performance of these vendors and how they are affecting the financial marketplace.” Cordray did not specifically mention any enforcement actions.

Richard Andreano, a partner at Ballard Spahr, wrote on the law firm’s blog that under Dodd-Frank, the CFPB can examine “service providers” to entities it supervises. Andreano believes the bureau may turn its eye toward software vendors.

“Director Cordray’s remarks suggest that the CFPB may be questioning whether various vendors are qualified to provide the services they offer and is preparing to use its supervisory and enforcement authority ... to take a closer look,” Andreano wrote.

O’Neill says the CFPB bulletin (Bulletin 2012-3 issued April 13, 2012) sets out lender liability and five steps that should be taken to minimize risk and potential exposure, which include:

- 1 Conducting thorough due diligence to verify that the service provider understands and is capable of complying with federal consumer financial law
- 2 Requesting and reviewing the service provider’s policies, procedures, internal controls, and training manuals to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities
- 3 Including in the contract with the service provider clear

ALTA Best Practices

As ALTA’s “Title Insurance and Settlement Company Best Practices” enters its fourth year, it continues to develop into a robust market standard for lenders and settlement companies on vendor management. To ensure this continues to be true, and to provide stronger risk management, ALTA’s Board of Governors will work to formalize the governance structure of the Best Practices.

The governance structure identifies two distinct groups:

- **Best Practices Executive Committee:** Tasked with maintenance and development of the Best Practices
- **Best Practices Task Force:** Operates in collaboration with the Executive Committee to help develop educational materials, and gather industry feedback on the Best Practices

ALTA has redesigned its Best Practices web page to help companies better identify Best Practices tools and resources that will be helpful to them, depending on the stage of their Best Practices implementation. The resources can be found at alta.org/bestpractices.



- expectations about compliance, as well as appropriate and enforceable consequences for violating compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices
- 4 Establishing internal controls and ongoing monitoring to determine whether the service provider is complying with federal consumer financial law
 - 5 Taking prompt action to address fully any problems identified through the monitoring process, including terminating the

relationship where appropriate

“This is the starting point when considering what constitutes sufficient due diligence in evaluating third-party service providers,” O’Neill said. “Then I would make a claim that if these are good enough in evaluating the relationship between lenders and third parties, these same types of steps would be appropriate when considering the relationship between third parties and fourth parties that are retained.”

The Vital Few

Using the phrase “tell me, show me, prove to me,” O’Neill said title and settlement companies should consider using ALTA’s Best Practices as the hallmark of a really good compliance management system (CMS). He advises including the seven pillars into a CMS, which will allow for tracking of the policies and procedures.

Those who have operated successful title and settlement operations have hired dozens if not hundreds of employees over the years. The same level of careful evaluation used when selecting an employee should be used with considering a service provider. As the process of vendor selection becomes formalized, many get ahead of themselves negotiating business terms with potential parties before ever considering critical qualifications.

When selecting a fourth-party service provider, O’Neill says it’s important to consider items that are deemed the most important to the company doing the hiring.

“I use the term the ‘vital few,’” he said. “Is it the fact that a business has a strong balance sheet or is it that they have certain hours of operation or business locations that is most important? Maybe it’s the ownership structure—corporation versus sole proprietorship—or ratings issued by Demotech, Kroll or Moody’s.”

Other considerations could include whether there is any pending litigation against a prospective vendor or a vendor’s ability to quickly and effectively resolve consumer complaints. O’Neill drives home the point that evaluation of any kind of service

Digital TitleNews Extra: TitleTopics Webinar: Vendor Liability Webinar

provider should focus on a few essential factors “that you would put in the highest regard, before you ever have a discussion about the business terms.”

“You can spend a whole lot of time negotiating business terms and then end up with a partner that may not otherwise be qualified,” he added.

Sound Vendor Management Practices

O’Neill recommends title professionals do the following things when implementing practices:

- Use non-disclosure agreements (NDAs)
- Define diligence considerations
- Define the parties respective ‘roles and responsibilities’
- Document the work flow with a written process map
- Conduct reference checks of existing customers and trade references

- Consult other sources for vendor information – e.g. Google, Yelp, BBB
- Maintain service level agreements
- Train vendors to ensure there has been a sufficient transfer of knowledge
- Create and maintain scorecards
- Develop a communication matrix including an escalation process

“If you’re running a small business, think of every vendor that you have and routinely pay. It may be someone that you don’t even have a routine relationship with and it’s a one time payment,” O’Neill said. “The demarcation is who has access to your office, and more importantly, potential access to non-public private information.”

Before leaping into discussions around contract terms, O’Neill encourages title professionals to conduct a simple ‘roles and

responsibilities' analysis. This can be accomplished by documenting what the respective parties do, including when and where. This helps build a process map of the workflow, identifying who is conducting what function in what can be a complex service chain.

"This is a new discipline in many of our businesses and it's probably past time that we have a formal job description and an individual designated as the vendor manager. This person is the one assigned the final responsibility for identifying, selecting and contracting with fourth-party service providers," O'Neill suggested.

Lender Scorecard

Kate Steineman, vice president and business liaison manager for Wells Fargo Home Mortgage, encourages title professionals to communicate with their lending partners so they can understand what practices they follow and their strategy for managing their vendor partners.

Prior to the CFPB bulletin, the vendor management process focused on safety and soundness.

"We managed by an understanding of the risk exposure in terms of how many loans were outstanding," she said. "With the focus moving from safety and soundness to consumer protection at a transactional level, we overhauled our third-party policy."

Wells Fargo expects all settlement agents to fully comply with its closing instructions, and performance management metrics are aligned to monitor for this compliance. For example, metrics in the early performance scorecards included recording fee accuracy, recorded mortgage delivery and

final title policy delivery. Other performance metrics are monitored internally, and these processes—as well as external performance reports—will continue to evolve to include new metrics.

The lender first worked with its title underwriters to document what was already in existence in terms of agent oversight. Wells Fargo focused on due diligence and requested copies of policies and procedures, and asked questions such as, "How do you manage your agents?" "When do you audit and how?" and "How often are the audits?"

"We wanted to really understand from A to Z what those processes already looked like in terms of oversight," Steineman said.

From there, Wells Fargo created scorecards for its underwriters to hold them accountable for the things outlined in their agreements. Once that was in place, the lender turned to its title and settlement agent partners who were closing retail transactions to let them know what was going to be required. The lender initiated a performance management team responsible for creating agent scorecards. Wells Fargo uses one scorecard for all of a company's branches. As an example, if ABC Title has seven locations through Minnesota, the performance card is aggregated.

Companies are scored on a green, yellow and red system. Green means the company is performing well. Yellow means the company needs to improve, while red indicates there are issues. Steineman indicated that Wells Fargo noticed agency performance improved in a short period of time.

In order to reach green status, Steineman encourages companies

to set an action plan and talk with their staff to ensure all are aware. If working with Wells Fargo, make sure you read and follow the closing instructions. "It's a matter of understanding what the expectations are of you from your lender, and creating a plan to achieve those results," Steineman said.

Critical Mass

There's no doubt the CFPB's 2012 bulletin altered the way businesses think about managing partner relationships. As a result, third-party vendor management has evolved into a critical function. Title and settlement companies can no longer afford to ignore this trend. Being able to perform regular due diligence on third-party vendors is essential in this regulatory climate that is so focused on protecting the consumer.

"Lenders have always had two choices in managing third-party vendors: Do it yourself, or hire someone else to do it," said Jeff Schurman, former director of the Title and Appraisal Vendor Management Association (TAVMA) and now an independent industry consultant and best practices trainer with Pittsburgh-based Qualmodal LLC. "Now, with increased regulatory oversight, higher costs and increased focus on overall quality—including the quality of vendors' policies and procedures—vendor management has become one of the most critical parts of the compliance enterprise." ■



Jeremy Yohe is the vice president of communications at ALTA. He can be reached at 202-261-2938 or jyohe@alta.org.

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Year-end Tax Bill Increases FIRPTA Withholding Rate to 15 Percent

Withholding Agent Liable for Full Amount of Tax Required to be Withheld

BY STEVEN GOTTHEIM AND MELISSA MURPHY

Effective for closings on or after Feb. 17, settlement agents will need to start holding back more proceeds from the sale of property by foreign nationals thanks to recent changes to the Foreign Investment in Real Property Tax Act (FIRPTA). The changes were part of the year-end tax extension legislation signed into law by President Obama on Dec. 18, 2015. (Reference: The legislation is H.R.R. 2029, now known as Public Law 114-113. See Section 324 for text of changes.)

The IRS has released new versions of Form 8288 and 8288-B to reflect the increase in the FIRPTA withholding rate. The IRS confirmed the effective date to be Feb. 17.

FIRPTA is a tax law passed in 1981 requiring foreign persons to pay U.S.

income tax on the gains they make from selling U.S. real estate. The duty is on the U.S. national buyer (and not the settlement agent) to deduct and withhold a portion of the sales price and report the sale to the IRS. Buyers can withhold less than the statutory amount if they obtain a determination of the specific amount of tax owed by the foreign national using IRS Form 8288-B. In most cases, the settlement agent is the party that actually remits the funds to the IRS, but the buyer is held legally responsible. Additionally, until the tax is paid in full, the government obtains a security interest in the real property.

Under the changes, the withholding rate for sales by foreign nationals will increase to 15 percent of the total sales price (up from the current 10 percent). The changes do not impact

the current FIRPTA exemptions—including the exemptions for sales under \$300,000 for the sale of a primary residence or for vacant land. Additionally the current 10 percent withholding amount still applies to sales of primary residences where the sales price is less than \$1 million.

So here is your new cheat-sheet:

- If the amount realized (generally the sales price) is **\$300,000** or less, AND the property will be used by the buyer as a **primary residence**, the withholding rate is **0 percent**.
- If the amount realized **exceeds \$300,000 but does not exceed \$1 million**, AND the property will be used by the buyer as a **primary residence**, the withholding rate is **10 percent on the full amount realized**.
- If the amount realized exceeds \$1 million, then the withholding rate is **15 percent on the entire amount**, regardless of use by the buyer.

Title and settlement companies will want to review their FIRPTA procedures to ensure they will assist in compliance with the law. It is a good assumption that the risks associated with using the \$300,000 exemption will continue and expand to the new rate for transactions under \$1 million.

Buyers (and their settlement agents) looking to take advantage of the exemption should document (under the penalty of perjury) the buyer's intent to use the property as a residence. Settlement agents should consider providing a disclosure to the

buyer of the legal and tax risk they face for misapplying the exemption. It is also a good idea to be on the lookout for red flags related to foreign sellers forcing the buyer to agree to claim residence status merely to lower the withholding rate. A buyer who fails to comply appropriately with FIRPTA could be liable for any additional withholding tax, penalty and interest. Many state and local real estate form contracts contains language specifically referring to a 10-percent withholding and will likely need to be updated.

Liability of Agents

According to the IRS, an agent is any person who represents the transferor or transferee in any negotiation with another person (or another person's agent) relating to the transaction, or in settling the transaction. A person is not treated as an agent if the person only performs one or more of the following acts related to the transaction:

- receipt and disbursement of any part of the consideration
- recording of any document
- typing, copying and other clerical tasks
- obtaining title insurance reports and reports concerning the condition of the property
- transmitting documents between the parties

A withholding agent is personally liable for the full amount of FIRPTA withholding tax required to be withheld, plus penalties and interest. A withholding agent is any person having the control, receipt, custody, disposal or payment of income that is subject to withholding. Generally, the person who pays an amount to the foreign person subject to withholding must do FIRPTA withholding.

Along with the increased withholding rate, the law made a number of changes that impact real estate investment trusts (REIT). The new REIT provisions have varying effective dates.

Qualified Pension Plans

One of the biggest REIT changes is a new exemption for distributions from the REIT to qualified foreign pension plans. The exemption applies to distributions made after Dec. 18. Prior to the changes, U.S. pension funds were generally exempt from U.S. taxation on capital gains distributions while foreign pension plans were not. To avoid the tax liability, many foreign pension plans relied on sophisticated structuring to minimize U.S. tax liability.

Tax-free Spinoffs

The act also makes important changes to the law related to tax-free spinoffs under Section 355 of the Internal Revenue Code. In recent years, businesses with significant real estate assets have used Section 355 to tax-efficiently separate real estate from the operating business. To prevent potential abuse, the changes require that both entities in a spinoff must satisfy an active business test meaning that neither the distributed or distributing entity is a REIT.

There are a few exceptions to this new rule including when

- 1 both the distributing and distributed entities must qualify for REIT status immediately after the spin, or
- 2 a REIT spins-off a taxable REIT subsidiary. Additionally, the act prohibits a corporation from making a REIT election within 10 years from the date of the tax-free spinoff.

These new limits for distributions (or requests for a private letter ruling from the IRS) became effective after Dec. 7.

Safe Harbor

The act increased the safe-harbor threshold to sales of up to 20 percent of the fair market value of the REIT's assets before it faces a prohibited transaction tax of 100 percent of the gain from the sale. This is an increase from the current 10 percent threshold. This change goes into effect for tax year 2016 and could help encourage more sales activity from REITs.

Personal Property

The changes confirm the situations in which rental income from the lease of personal property can be considered in the calculations to determine whether an entity qualifies as a REIT. To qualify for REIT status and tax treatment, 75 percent of an entity's income and assets in a given year must come from the rental of real estate, interest on a real estate secured debt, capital gains from the sale of real property and other real property related sources. Before the act, rents related to the leasing of personal property could be considered real estate rent for purposes of the asset test but not the income test. This provision kicks in for the 2016 tax year. While these are the main provisions that will impact a REIT's purchase and sale of real estate, a number of other changes were made to the rules surrounding REIT ownership and investments in a REIT. ■

Steve Gottheim is senior counsel for ALTA. **Melissa Murphy** is senior vice president and general counsel at Attorneys' Title Fund Services.



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Beyond TRID and Best Practices: What the Savvy Title Agent Is Thinking About Next

Now Is the Time to Trim Expenses Without Cutting Quality

BY MIKE BELL AND ELLIOT LISS

Talk in the title industry has centered on two topics over the past year: ALTA's Title Insurance and Settlement Company Best Practices (and the larger issue of lender liability for service providers) and, of course, the implementation of the TILA-RESPA Integrated Disclosures rule (TRID). While the industry will sooner or later adapt to TRID, we believe that in 2016, the issues which spurred ALTA to propose the Best Practices in the first place will continue on as a common topic. More specifically, as the Consumer Financial Protection Bureau (CFPB) begins to crack down on the third-party service providers of mortgage lenders, title and settlement

agents will likely see even more requirements from their lending clients mitigating their risk and increasing the agents' costs associated with maintaining compliance. From requirements for data security to centralized disbursement, consumer complaints and closing requirements, the title community in 2016 will be forced to find new ways to decrease or offset their already burgeoning costs. In many cases, they'll be considering ideas or concepts they might not have accepted even five years ago, all in the name of adapting to a rapidly evolving mortgage regulatory environment.

Competitors on some fronts. Partners on others.

Let's face it. Ours has always been a competitive industry. For the most part, title agencies cannot compete on price. Legal and regulatory requirements make it extremely difficult to go too far "out of the box" in creating a title-based product. We are limited to promoting a few elements of our products and services, which are the same things our competition is promoting. Furthermore, it's not always easy to convince a prospective client that one's service or efficiency is better than that of a competitor. As a result, we can sometimes pay perhaps too much attention to what our competitors are doing as we claw for market share.

In the coming year, that focus will begin to shift for many agents. For some, it already has. Even during the best of times, the typical business model for a title agency has never been about strong margins. With increasing demands from investors, lenders and regulators leading to exponentially increased expenditures on technology, expertise, staffing and more, a fair number of agencies are hitting their limits. For some, that means selling the business or even closing up shop altogether. But not everyone wants to (or can) exit the game. Accordingly, some of us are engaging in strategic partnerships, alliances and other similar agreements in order to pool similar resources and eliminate redundancies.

The goal is to cut costs without completely forfeiting the independence we've worked so hard to establish. While the individual agencies participating in such arrangements maintain a fairly autonomous focus on new business, marketing and the like, each participant simultaneously eliminates costly redundancies in the back office, production or support functions. If five agents can share a single technology platform or full-time staff position with no noticeable diminishment of the firms' capabilities, why not cut one's associated costs?

It goes without saying that some competitors will never share resources on principal (or pride) alone. But for those who can co-exist, partnering and networking can be an outstanding means for sharing mushrooming costs and maintaining profits.


Get rid of the last of your manual or bolted-on processes and paper files.

Some in our industry continue to do business the old fashioned way: paper files, ad-hoc processes, minimal technology. That is about to end. If the market alone doesn't drive the Luddite agent out of business, a CFPB eager to see the "paperless mortgage" could finish the job. A title agency that isn't using efficient processes held together by integrated technology is treading on thin ice. TRID alone will likely test that practice. The demands will continue to grow. Agents who aren't flexible, adaptable and efficient will soon become dinosaurs.

Don't forget that there are many types of technology that can assist an agent in staying compliant. If nothing else, the tech-enabled agency can show documentation to clients or regulators proving that they are making good-faith efforts to comply (and, in so

doing, keep their clients compliant with regard to third-party culpability). That reason alone should be grounds for reviewing your technological capabilities and processes with a skeptical eye.

If you're not sure where to start, there are more than a few firms and consultants out there who have extensive experience retooling agencies needing work in the streamlining department. Talk to your peers and trusted advisors for recommendations. Your underwriter or your trade associations may also have some suggestions. Chances are that you will

 **A title agency that isn't using efficient processes held together by integrated technology is treading on thin ice. TRID alone will likely test that practice.**

have to give up some processes and equipment you've used for years or even decades. The process could, at first, be costly and even a bit painful. But if your agency isn't as lean and efficient as possible, it's probably a matter of time before the "next TRID" or next new lender policy puts your business into the red.

Let someone else do it.

For a number of reasons, the title industry has long viewed outsourcing (especially offshore outsourcing) with a bit of disdain. Ironically, many of those who steadfastly refuse to outsource some job functions or processes to a third party have no objection whatsoever to making use of outside legal counsel or accounting

services. The fact is that outsourcing is not what it was even 10 years ago. There are numerous entrants to the space, each vying to prove they can assist your compliance efforts, maintain quality and reduce your costs.

It's time for us to accept that costs will not go down on their own. Not in the near future. Some of that is inherent to the way our industry came into existence. Ours is one of the few insurance segments to collect its fee only *after* investing its time, money and labor into the new policy. This is not the ideal collection model, but it is reality. The successful agents

have already purged unnecessary expenses from their operations. Positions requiring little or no skill, time-consuming reporting and other functions that can be done faster and cheaper should really, in today's climate, be outsourced as much as possible.

With each increased requirement placed on the title agent comes a cost. The game can no longer be solely about revenue. It has to be about margin and profit. Although most forecasts suggest that 2016 will bear similarity to 2015 as to loan origination volume, it is not likely that the "fish will jump into the boat" as they did during the refinance boom. Right now is the time for the title agent to be thinking ahead for ways

to trim expenses without cutting quality. It could prove to be one of the most effective competitive advantages available in years.

Beyond TRID, What Should Be Next

The CFPB wants it. The title industry has tried it before. What has changed? What are we talking about? The online, virtual closing is once again the new frontier. Yes, we know it has been tried before and multiple attempts have failed miserably. Attempts to build an online settlement platform have been less successful than the dozens of attempts to launch and certify new very light jets. So what is different? Frankly, the reason most of these virtual systems failed to gain any traction is twofold:

- 1 Lenders could not deliver loan packages in advance of the closing. In the past, it was typical to receive the packages minutes before or even hours after the closing was scheduled making it impossible to generate a HUD-1 Settlement Statement in advance. This rendered most attempts to deliver this to the borrowers in advance pointless;
- 2 Most of these systems were too ambitious. Various systems tried to incorporate all electronic delivery systems, document signing and e-notarization. Now that lenders are required to deliver the Closing Disclosure at least three days in advance of the consummation, we are able to consider delivering the full package electronically to

the borrower with document-by-document audio and textual help. Now, the borrowers can relax at home and review their entire loan package with detailed help well in advance of the actual consummation.

Let's leave it at that: 90 percent of the utility in such systems is accomplished. Don't try to overreach for 100 percent. This allows for simplicity and economy. ■

Mike Bell and **Elliot Liss** are principals for Closeline Settlements, a title agency that services more than 40 states. They are also members of TitleConnect, a strategic alliance and partnership platform for title agents. For more information, go to www.closeline.com or email them at mbell@closeline.com or eliss@closeline.com.

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Title Agents Must Watch for Fraudulent Deeds

Scams Highlight Another Reason Why Homebuyers Should Purchase an Owner's Policy

Fraud and forgeries have existed for as long as private property rights have existed in real property. They provide a great example of why consumers should purchase an owner's title insurance policy when buying a house.

Recently, there has been a rash of incidents across the country of people allegedly forging or attempting to forge deeds that are available online to illegally sell homes.

In New York City, it is possible to view online copies of deeds, mortgages and other documents, which often include owners' signatures, primary addresses, emails and phone numbers, the amount of the mortgage and whether there are liens on the property. Investors and those who live elsewhere during the winter months are susceptible to this crime. Fraudsters often target high-demand areas, and price homes just below market values. Often, cash buyers will snap them up quickly in all-cash transactions. As an example,

a 79-year-old woman owned a property in Harlem in addition to her primary residence. She left the house empty for years. Eventually returning, she found the house had been sold without her knowledge about a year earlier for \$750,000. The house is valued at more than \$1 million. Fortunately, the unsuspecting people who purchased the home also bought an owner's title insurance policy.

"Title insurance is the only protection for this type of fraud and should be emphasized even more due to the rise of this situation," said Cynthia Blair NTP, a partner of the South Carolina-based law firm Blair Cato Pickren Casterline. "Our abstracters are trained to note any mortgage that is satisfied on the records without a corresponding refinance or sale so that we can investigate it further. While this wouldn't catch all instances of a fraudulent seller, it's certainly a major red flag."

There have been about 30 related incidents reported recently just in the Manhattan borough of New York, according to officials at the Manhattan district attorney's office. The New York City Department of Finance, which started tracking such crimes about a year ago, said it is currently investigating 120 cases. Meanwhile, prosecutors in Chicago and Detroit also said they have seen a spike in deed fraud. The Cook County recorder of deeds currently has 62 open investigations of suspected fraud, a spokesman said. To combat the problem, New York and many other counties have implemented fraud alert systems, according to Mark Ladd, vice president of industry and regulatory affairs for Simplifile. New York moved to a more robust system in 2014.

According to Frank Pellegrini, president of Prairie Title and past president of ALTA, the Cook County Recorder of Deeds (which includes metro Chicago) implemented measures to detect and thwart real estate fraud. Grantors receive postcards to verify intent for quitclaims. Additionally, Illinois has passed several laws specifically designed to prevent fraud in Cook County. An example is the Notary Act, which contains requirements for fingerprinting and maintenance of a notarial record for deeds affecting Cook County property.

"Cook County has been fertile ground for perpetrators of real estate

fraud for many years,” Pellegrini said. “Title insurance is the only good news in this mess.”

Despite having fraud alert systems in place, the homeowners may not receive the notification for various reasons. In addition, criminals have found ways to circumvent the system.

“What I have seen in some of these cases is that even though the rightful owner received a notice from the county, they didn’t understand the implications, and so they ignored it,” Ladd said. “In other cases, people moved but didn’t update their information in the fraud alert system and thus, even though a notice was sent, it didn’t get properly delivered. I’ve even heard of the crooks changing the contact information in the fraud alert system so that the notice gets sent to the crooks. The crooks have figured out how the system works and in some cases, they’ve figured out how to spoof it.”

To help prevent this fraud, Title Lock recently launched a national service that alerts property owners of any fraudulent, mistaken or otherwise illegitimate filings, or recordings that could adversely affect the home value or property ownership.

According to a press release, Title Lock partners with one of the largest title companies in the country to send alerts in real time when documents of any type are filed at the county recorder against a property’s address.

“The sad truth is, very few (county recorders) have systems in place to verify the accuracy of those filings,” said Matthew Sorensen, vice president of sales and marketing at Title Lock. “As a result, homeowners aren’t notified when title fraud happens.” ■

How to Spot a Fake ID

Look for these security features on ID cards

Key:



Can be seen with the naked eye



Requires touch to detect



Tilt card to view feature



Requires light source

Fine-line or guilloche pattern



A pattern of continuously fine lines constructed by using two or more lines in overlapping banks that repeat a lacy, web-like curve.

Ghost image



Half-tone reproduction of the original image that is typically printed in the same area as, and behind, personal data.

Laser engraving



Information that cannot be mechanically or chemically removed without surface damage to the card. Can be used for photos, characters, bar codes, OCR, etc.

Laser perforation



Holes made with a laser beam to form images or objects. Image is visible when held up to a light source. It has tactile feel with conical holes that are larger at the entrance than exit.

Overlapping data



Variable data, such as digitized signature, seals, or text that can be placed over another field such as a photo image. Both fields must be altered to make a fake.

Overlay



An ultra-thin film or protective coating that may be applied to the surface of a card in place of a security laminate and which may contain optically variable features.

Tactile feature



A feature that is apparent to touch or feel without the use of a special instrument. This could include texture, flexibility, or weight of the document.

Transparent image



See-through, window-like feature visible from both sides of a document.



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Lending Market Shifts Post TRID

Compliance Costs Push Some to Exit Retail Mortgage Origination Channel, While Others Look to Expand

Title professionals can expect their lender business to evolve as non-banks continue to gain market share, some companies decide to stop offering retail residential mortgages and others make acquisitions.

Wells Fargo still sets the pace as the top lender, but its marketshare has fallen from originating 28 percent of all new home loans in the first quarter of 2012 to about half by the end of 2014. JPMorgan Chase remains the second largest originator but its marketshare has decreased 2 percent over the same period to 7 percent. During its 2015 fourth-quarter earnings call, JPMorgan Chief Financial Officer Marianne Lake said there's "a lot of operational complexity to complying" with regulations that led to "origination volumes [being] a little lower than we would have otherwise seen."

Overall, marketshare of the top five banks has fallen nearly 25 percent over the past three years. Filling the void has been non-banks. Among the top 40 lenders, non-banks accounted for

37.5 percent of originations in 2014, up from only 7.5 percent in 2011, according to Guy Cecala, publisher of *Inside Mortgage Finance*.

Quicken Loans and PennyMac are the two-fastest growing originators. Quicken Loans was the fifth-largest loan originator in 2012 and rose to third last year. PennyMac jumped from 15th to eighth. Other non-banks in the top 15 include PHH Mortgage, Freedom Mortgage, Walter Investment (also known as Green Tree Servicing) and Nationstar Mortgage.

During 2016, it's expected that PennyMac will look to grow its broker business and compete with the likes of Stearns Lending, United, Caliber Home Loans, Flagstar Bank and Quicken. During the company's 2015 fourth-quarter earnings call, company CEO and founder Stan Kurland said he expected PennyMac to increase market share and that wholesale will play a role. The correspondent channel accounted for 91 percent of PennyMac's \$11.1 billion in fourth quarter originations, with consumer-direct activity accounting for the rest.

Recent hiring activity by non-banks reinforces the activity and growth. The non-bank mortgage sector ended 2015 with 12,300 more full-time employees than in December 2014, the Bureau of Labor Statistics reported. Total sector employment rose to 301,400 in December, although non-bank lenders added just 100 new hires to their payrolls in the final month of 2015.

While non-banks are growing volume, some lenders are looking to grow marketshare through acquisition. In January, Huntington Bancshares announced it was buying FirstMerit Corp. in a deal worth \$3.4 billion. The merger will create the largest bank in Ohio by deposits. The combined company will have nearly \$100 billion in assets and about 1,000 branches in seven states, with a huge concentration in Ohio and Michigan. The merger will move Huntington from the 33rd-largest bank up to the top 20. This is Huntington's first major acquisition since it bought SkyBank in 2007.

Huntington has 12,200 employees, \$71 billion in assets and 750 branches in Ohio, Pennsylvania, Michigan, Indiana, West Virginia and Kentucky. Huntington said it would expand into Chicago and Wisconsin, where it has not had a presence.

Huntington operates a captive title insurance company called HBI Title Services. FirstMerit closed its in-house title operations last year. The transaction is expected to be completed in the third quarter of

2016 but will need regulatory and shareholder approval.

Meanwhile, BB&T, the 12th-largest U.S. bank by assets, announced last year it would acquire National Penn Bancshares, in a \$1.8-billion deal the bank said will close around April 1. Last year, it bought Susquehanna Bancshares for about \$2.6 billion and the Bank of Kentucky for \$395 million. The lender may not be done in 2016, according to BB&T CEO and Chairman Kelly King.

“While long-term we are still bullish with regard to M&A, I wouldn’t be surprised if we didn’t do anything this year,” King said in a webcast from a financial services conference hosted by Credit Suisse.

Other smaller deals around the country include Michigan lender Chemical Financial (\$9.2 billion) acquiring Talmer Bank and Trust (\$6.6 billion) for about \$1.1 billion, while in California, Opus Bank (\$6.6 billion) will acquire Pensco Trust for \$104 million.

“I think you will see a huge wave of mergers in banking in 2016,” Rafferty Capital’s Richard Bove told CNBC. “The regional banks are going to be buying each other and I would expect to see 2016 being one of the biggest years for bank mergers that we have seen in the last decade.”

On the other side of the coin, two Florida-based banks recently announced they were exiting the mortgage origination space, citing regulatory costs. Effective Jan. 13, Miami Lakes, Fla.-based BankUnited stopped accepting applications. The bank said it would close all the loans in its pipeline. According to reports, Mary Harris, senior vice president of marketing and public relations for BankUnited, said the company was

Title Companies Make Acquisitions

Two title companies recently made purchases in an effort to grow their reach. New York-based Kensington Vanguard National Land Services continued the expansion of its national platform with the acquisition of a controlling interest in New Jersey-based Property Title Group LLC.

Property Title Group will continue to be co-managed by industry veterans Donald Cohen and Marilyn Henshaw, who retain ownership interests in the company.

“In Property Title Group, Don and Marilyn have built a top-flight firm with an impeccable reputation in both the commercial and residential segments of the market,” said Brian Cooper, co-CEO of Kensington Vanguard. “We’re very excited to announce this partnership as we continue to expand both organically and through acquisitions in key markets.”

After a private equity investment led by Red Oak Partners in 2012, Kensington Vanguard positioned itself to be a consolidator in the title insurance market. In 2013, former deputy director of the Consumer Financial Protection Bureau, Raj Date, joined the company’s board of directors.

In a move to increase its presence in California, Texas-based Chronos Solutions announced it has acquired Commerce Title and Closing Services LLC from Ten-X LLC.

“Commerce Title is fully licensed to perform title work throughout California,” said Chronos Solutions CEO Matt Martin. “With this acquisition, we deepen the resources we can offer to our clients.”

not able to “generate enough volume because of compliance costs.”

The bank received a \$4.9-billion federal government bailout after failing in 2009 because of bad mortgage loans it made during the real estate boom. Private equity investors bought BankUnited from federal regulators a few months after it failed, taking it public two years later. BankUnited made \$454 million in new residential mortgage loans as of the third quarter of 2015, according to a federal regulatory filing. The bank has 98 retail branches in Florida and six locations in New York City.

Meanwhile, Ditech Financial announced that it also has exited the retail mortgage channel. The Tampa, Fla.-based Walter Investment Management subsidiary said in a release that effective Jan. 8, it will focus on its consumer-direct channel

and its retention and correspondent lending.

Ditech generated about \$400 million of funded volume in the distributed retail channel for the nine-month period ending Sept. 30. The company said it will close all the remaining loan applications in its pipeline originated through the retail channel. Ditech was acquired by Walter Investment Management from Ally Financial, formerly GMAC-ResCap, in March 2013.

“Throughout 2015, we moderated our investment in the distributed retail channel given current and expected market conditions, as well as recent regulatory considerations, and subsequently made the decision to exit the channel,” said Denmark Dixon, Walter Investment’s vice chairman, CEO and president. ■

10 Questions with Tom Richardson

General Counsel for Liberty Title Agency

How did you get started in the title industry?

I've worked in the industry since 1974 when my father founded Liberty Title. The first entries in the title plant are in my handwriting. I must admit that I wasn't pleased with the job (\$1.90 an hour), as my uncle had arranged a job on the assembly line at Dodge plant that paid \$12 an hour.

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

My biggest challenge is the wave of questions I face every day trying to help get deals closed/problems solved in a way that creates "teachable moments" for my colleagues (so I do not get the same question again).

What's your best industry "war" story?

This is a great line from a closing several years ago: "I didn't steal the money. Harold stole the money." A condo development hit the financial rocks, and there were \$1.3 million in construction liens. After two days of meetings, we reached a deal for a new developer to complete the project. As the principals of the original developer were signing indemnities to cover liens, one balked and uttered the

memorable line above. Their counsel leaped to his feet and hustled his clients out of the room. I asked the bank counsel if they knew who stole the money and he replied, "I guess we know now."

Why is this industry a great career opportunity for those entering the workforce?

This is a job where you can think and face new issues, problems, decisions and clients every day.

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

Learn how to draw a metes and bounds parcel in your head. If you can do that, you can call yourself a title person.

How has the industry evolved since you began your career?

The tail now wags the dog: Escrow drives business development on the title side. When I started in 1974, we closed fewer than 10 percent of our transactions. Now, we close probably 90 percent of our transactions. We had to graft a whole new business on to our title operations—one that requires colleagues with different skill sets.



Why are you a member of ALTA?

Ideas! I love to listen, share and learn. ALTA is a "safe" environment, one where I can speak frankly about our business with people who are not competing in my local market.

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

I serve on the Abstracters and Title Insurance Agents Section Executive Committee because of the ideas we share and the camaraderie. I'm also on the Real Property Records Committee because I am the title industry representative on Michigan's e-recording commission.

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

When I was 14, I swam the Straits of Mackinac between the upper/lower peninsulas of Michigan

What's your favorite book or movie?

My favorite movie is "The Lives of Other." It's a stunning drama about the Stasi and the impact of covert surveillance on both the observed and the observers. It's well worth wading through the subtitles. ■

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Title Companies Win RESPA Case in Illinois

Court: Splitting Fees with Attorneys Not Kickbacks

An Illinois state appeals court ruled Dec. 9 that two title insurance companies did not make illegal kickback payments by splitting a fee with attorneys. A three-justice panel of the Illinois First District Appellate Court ruled 2-1 to uphold a decision dismissing class actions brought against Chicago Title and Trust Co. and Tigor Title Insurance Co.

“We affirm the trial court’s ruling that the title companies’ payments to attorney agents were not prohibited under (the Real Estate Settlement Procedures Act) where attorney agents provided settlement services in return for the payment, and the reasonableness of the monetary amount of those payments is irrelevant,” the justices wrote in their opinion. Consequently, the plaintiffs failed to establish a violation of the Illinois Title Insurance Act and Illinois Consumer Fraud and Deceptive Business Act.

The plaintiffs alleged that payments made by the title companies to attorneys who also served as attorney agents were unlawful because the title companies provided those attorneys with a *pro forma* title commitment that determined the insurability of a

property’s title. The plaintiffs asserted that this function must be performed by the attorney agents to earn the fee paid by the title companies. The plaintiffs also claimed that because the attorney agents received the *pro forma* commitment, they did not perform “core title services,” and the title company’s payment was unearned and, in reality, an illegal kickback.

A Cook County judge originally refused to certify a class in the case. The appellate court later overturned that decision, and ordered the court to certify a class. However, after certifying a class including anyone who purchased title insurance from Chicago Title from 2001-2005 and from Tigor from 2000-2005, the lower court ruled against plaintiffs, saying legal precedent holds attorneys need only perform some “core title services” specified in the law to allow them to legally receive payment from the title insurance companies as a “title agent.”

After the plaintiffs appealed, a majority on the First District appeals court agreed with Cook County Judge Mary L. Mikva. The appellate opinion was authored by Justice Mary Anne Mason, with Justice

Terrence J. Lavin concurring. The justices wrote that recent case law—particularly the U.S. Supreme Court’s 2012 decision in *Freeman vs. Quicken Loans*, indicated “the only reasonable interpretation ... is that it (RESPA) prohibits fee splitting with a party where no services are provided in return for the fee, which is consistent with RESPA’s underlying purpose of preventing the abusive practice of paying a party merely for the referral of business.”

The justices noted that *Freeman* recognized that “a service provider could avoid [RESPA] liability by providing just a dollar’s worth of services in exchange for [a] \$1,000 fee” because RESPA is not a price control statute and is not concerned with the “value, amount or quality of services” rendered.

In this case, the justices said, the attorneys appeared to provide some of the core title services referenced in the law, including clearing any cloud to the real property’s title, i.e., any liens; providing instructions on what to include on title commitments; recommending the waiver of exceptions to title; making changes to the A-Exam or Preliminary Commitment; and attending closings.

“As *Freeman* tells us, RESPA is not concerned with whether the attorney agents were paid too much for their actual services, but asks only whether actual services were rendered. Thus, the title companies’ payments were not unlawful,” the appeals court said.

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

North American Title Insurance Co. (NATIC) named Habif Arogeti & Wynne LLP (HA&W) as a trusted partner, listing it as a member of the NATIC AgentMarketplace Program. Through its ComplianceSuccess Program, HA&W offers compliance benchmarking and assurance reporting services for ALTA's Title Insurance and Settlement Company Best Practices to NATIC agents. The program offers

independent, third-party attestation using CPA professional standards.

"Comprehensive testing and reporting is a key provision across all seven ALTA Best Practices pillars," said Emilio Fernandez, NATIC president. "NATIC is pleased to offer HA&W as a quality vendor to our title agents to ensure they achieve and demonstrate compliance with ALTA Best Practices to their valued lender customers."

IntelliCorp Offers Background Screening Services to Title Industry

Businesses and organizations want to hire qualified individuals who are a good fit. To help with this, IntelliCorp announced it now offers title companies background screening services to help minimize risk and make informed hiring decisions.

IntelliCorp, a Verisk Analytics company, has been accredited through the National Association of Professional Background Screeners (NAPBS).

When conducting criminal background checks, reporting the proper information on your applicants is essential, according to IntelliCorp. The company's validated

criminal search process includes returning to the source of the data to ensure the latest updates regarding the subject's history.

To further refine the search process, the company applies the appropriate state and federal Fair Credit Reporting Act filters based on the applicant's home address and state of employment or volunteerism.

IntelliCorp offers additional products and services, including education/employment/reference verifications, credit reports, drug testing and motor vehicle reports.

TLTA Defends Texas Rate-setting Structure

Competition is "alive and well" the Texas Land Title Association said in response to a suggestion by two organizations that the state reform its rate-setting structure.

The Texas Association of Business and the Texas Public Policy Foundation believe the promulgation of rates by the state prohibits competition in the market and results in higher cost to consumers. TLTA President Patti Bonner, however, pointed out that a title insurance policy in Texas costs less today than it did 20 years ago.

"The title industry has seen only one price increase in the last two decades," Bonner said. "Very few industries can make that claim about their prices. By any measure, the Texas title insurance regulatory system works well for consumers. Over the past two decades, Texas title insurance

rates have decreased by approximately 15 percent. A \$150,000 title policy on a home today costs \$1,152, while in 1991 the same policy cost \$1,347."

The current regulatory system in Texas is managed by the Texas Department of Insurance with additional consumer protection oversight from the Office of Public Insurance Counsel (OPIC). Title insurance rates in Texas are set by the commissioner of the state's department of insurance.

TLTA pointed out that comparing title insurance rates to other states does not provide a full picture of cost. In many states, while insurance premium rates may appear lower, other costs such as attorney's fees, abstract fees and higher closing fees are not factored into the title premium as they are in Texas. Rates in Texas are all-inclusive.

Accurate Group Launches New Appraisal and Title Management Platform

Accurate Group recently released a new interface for its appraisal management and title services platform. The company said its Accurate Archer managed services platform gives

banks, mortgage lenders and credit unions on-demand access to analytics and insight into revision rates, turnaround time, quality control and compliance.

Old Republic Launches Specialized Commercial Services Division

Old Republic National Title Insurance Company (ORNTIC) recently formed Old Republic Specialized Commercial Services, a business division of its National Services Group.

The new division stems from a merger of the existing Old Republic Commercial Due Diligence Services business and the Commercial Department of Old Republic Title Residential Information Services.

Old Republic Specialized Commercial Services is now organized to provide

national commercial due diligence services such as:

- Commercial land surveys
- Zoning reports and letters
- Environmental reports
- Property condition assessments
- Commercial valuation services

Continuing under the direction of Patrick Connor, executive vice president of ORNTIC and manager of the National Services Group, Old Republic Specialized Commercial Services will maintain its operation centers in Akron, Ohio, and Plano, Texas.

Stewart Executives Ring NYSE Opening Bell on January 29

Executives from Stewart Information Services, including Matt Morris, chief executive officer, rang the opening bell on Jan. 29 for the New York Stock Exchange. Joining Morris on the podium were Thomas Apel, Stewart's

chairman of the board; Allen Berryman, chief financial officer; John Killea, chief legal officer; Ted Jones, chief economist; Nat Otis, director of investor relations; and Jennie Craig, vice president of marketing and media relations.



FTC Develops New Tools for ID Theft Victims, Provides Tips for Businesses to Protect Data

Identity theft victims can now go online and get a free, personalized identity theft recovery plan as a result of enhancements to the Federal Trade Commission's IdentityTheft.gov website.

The website is integrated with the FTC's consumer complaint system, allowing consumers who are victims of identity theft to file a complaint with the FTC and then get a personalized guide to recovery that helps streamline many of the steps involved.

In addition to IdentityTheft.gov and the new personal recovery plan features, the FTC also provides educational materials for businesses, with information on how to prevent identity theft and remain vigilant for other scams.

In 2015, the FTC received over 490,000 consumer complaints about identity theft, representing a 47-percent increase over the prior year, and the Department of Justice estimates that 17.6 million Americans were victims of identity theft in 2014.

What can businesses do to help?

- Tell employees about IdentityTheft.gov. Perhaps send a company-wide

email about the site.

You might also want to consider naming a trusted member of your HR team to talk to employees about ID theft prevention.

- Publicize IdentityTheft.gov to your customers. *Many businesses have a protocol in place for working with consumers who call about unauthorized charges or unapproved accounts. Consider adding the simple step of mentioning IdentityTheft.gov. Your business can be part of the solution, and change a distraught consumer into a loyal customer.*
- Talk about identity theft prevention and recovery in your community. *Everyone knows someone who has been the victim of ID theft. That's why identity theft prevention and recovery can be a perfect pet project for your industry association or community group.*



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Charlotte Jones
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Shaffer Settlements, Inc
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Law Offices of Patrick M. Stevens, PA
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PENNSYLVANIA

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Titusville

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Oleander Title Agency
Myrtle Beach

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Dirty Laundry

Days after the horrific terrorist attacks on Sept. 11, 2001, Congress went to work drafting the Patriot Act. It took about 45 days to shepherd the 600-page bill through an all too eager Congress, set “to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.” The bill passed with such urgency that no conference committee ever convened to reconcile differences between the House and Senate versions of the bill. Instead, administrative staff did the work behind closed doors.

One goal of the Patriot Act is to deter the ability of terrorists to fund their activities with money laundered through banks here and overseas, and through other assets, including real estate. To that end, Title III of the act deals with international money laundering.

Significantly, the Patriot Act amended the Bank Secrecy Act to require financial institutions to strengthen their anti-money laundering compliance programs. The compliance program must be reasonably expected to detect and cause the reporting of suspicious transactions, and must minimally include the following:

- The development of internal policies, procedures and controls
- The designation of a compliance officer
- An ongoing employee training program, and
- An independent audit function to test programs

Put simply, anti-money laundering compliance programs require financial institutions to know their customers, perform a level of due diligence, and detect and report suspicious transactions.

The term “financial institutions” is defined by the Bank Secrecy Act to include “persons involved in real estate closings and settlements.” However, through the Patriot Act, Congress left it to the Department of Treasury to determine which financial institutions it would regulate.

In 2003, the Department of the Treasury published an Advanced Notice of Proposed Rulemaking. It was trying to determine whether to lift temporary exemptions granted to “persons involved in real estate closings and settlements” and enact regulations that could sweep title insurers, settlement agents and perhaps others into requirements to detect and report money laundering to the Treasury’s Financial Crimes Enforcement Network (FinCEN).

Fortunately, following a very strong lobbying effort on the part of ALTA and other trade organizations, the Treasury decided not to move forward. Maybe nothing more will happen. But maybe it will. Do FinCEN’s recent Geographic Targeting Orders affecting the title industry in the Borough of Manhattan in New York and Miami-Dade County, Fla., foreshadow more to come? (For more on this, go to www.alta.org/fincen.) Will the title industry be required someday to implement anti-money laundering compliance programs? Just think what one stroke of the pen in Washington could mean to the way we conduct business.



— John Hollenbeck NTP, ALTA president



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- *Quintus S. Williams, CMA: RamQuest Customer & Senior Vice President, Long and Foster Settlement*



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When: Sunday, April 3
Prior to MLTA Spring Seminar

Time: 1 p.m. to 5:15 p.m.

Where: Kelly Inn
St. Cloud, Minnesota

NEW JERSEY HOP WORKSHOP

When: Tuesday, April 12

Time: 11 a.m. to 3:15 p.m.

Where: Hilton East Brunswick Hotel
East Brunswick, New Jersey

FLORIDA HOP WORKSHOP

When: Tuesday, April 19

Time: 11 a.m. to 3:15 p.m.

Where: Renaissance Fort
Lauderdale Cruise Port Hotel
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