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American Land Title Association

TitleNews

Cyber Snipers Zero In on Industry

Title and Settlement Agents Must Be
Vigilant Against Onslaught of Fraudulent
Email Schemes as Regulator Attention Accelerates



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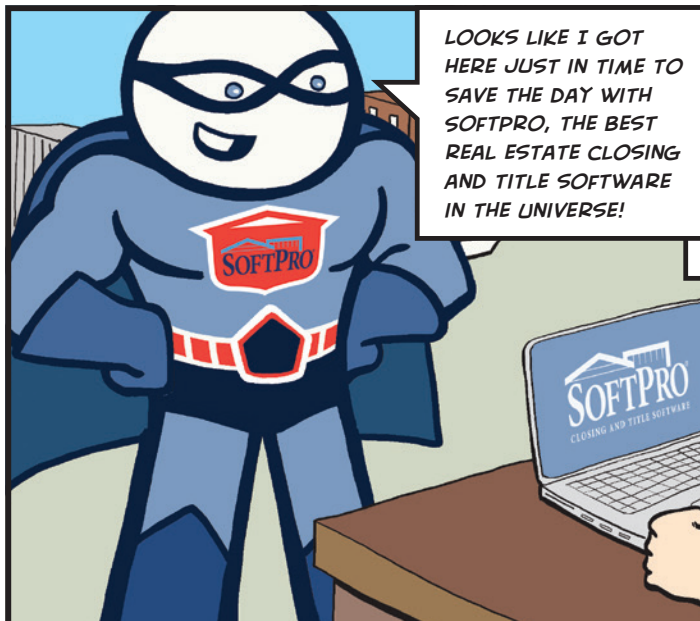
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October 4-7 | Annual Convention
Scottsdale, AZ

STATE CONFERENCES

June 12 - 14 | New Jersey
Galloway, NJ

June 12 - 14 | Wyoming
Cody, WY

June 12 - 14 | South Dakota
Chamberlain, SD

June 15 - 17 | Texas
Galveston, TX

June 16 - 19 | New England (CT,
ME, MA, NH, RI, VT)
Cape Cod, MA

July 6 - 8 | Illinois
Champaign, IL

July 14 - 16 | Utah
Park City, UT

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



Data Breaches

The digital edition of TitleNews includes a webinar recording of "Life Cycle of a Data Breach: Know What You Need to Do," which addresses breach notification requirements, the potential costs to resume operations following a breach, and examines the stages of a breach.

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

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Upsetting the Apple Cart: Competing in the New Economy

From Uber and AirBNB, to Amazon and Apple, it's hard to ignore the rapid changes that have revolutionized the consumer economy. In our industry, Know Before You Owe and advances in technology have disrupted how ALTA members work and share information. Innovative companies are working right now to develop new processes to meet evolving market needs.

It's important to remember that while innovation may begin as a new product or service, disruptors take a wider perspective and focus on creating a new business model. Think about Apple. They view the smart phone as more than a device to make calls. The company saw it as personal technology providing Internet connectivity and access to social media, videos, photos, fitness monitoring, and apps that address the owner's personal interests.

ALTA leadership always is thinking about what we can do to help members re-think their intuition and better prepare our members for business challenges ahead. During ALTA's 2016 Federal Conference and Lobby Day, I moderated a panel of CEOs from the American Bankers Association, Newspaper Association of America, and American Insurance Association. The panelists provided some great insights on how companies need to innovate and reframe business models to meet new challenges and evolving consumer demand. We also touched on the five global trends that the management consulting firm McKinsey & Company says are the five global trends that affect all industries:

1. Technology
2. Demographics (the aging of the world population)
3. Consolidation
4. Globalization
5. Regulation

This edition's cover article features the latest trends in cybersecurity. Rapid advancements in technology and regulation in this space have spurred innovation to help protect data and money. This will continue to affect how ALTA members share documents and disburse funds for real estate transactions.

As you think about your business model, what can you do to create more value for your services? The future of your industry is in your hands. ALTA is here to help lead the way.



— - Michelle Korsmo, ALTA chief executive officer



Title Insurance Premium Volume Increases 16 Percent in 2015

The title insurance industry generated \$13.1 billion in title insurance premiums in 2015, up nearly 16 percent from 2014, according to ALTA's 2015 Year-end and Fourth-quarter Market Share Analysis.

Meanwhile, during the fourth quarter of 2015, the industry reported \$3.5 billion in title insurance premiums, up 12 percent when compared to the same quarter the previous year.

Last year provided to be interesting for the title insurance industry. Net income was nearly the same as 2014 (\$788.2 million in 2015 versus \$799.6 million in 2014). However, operating expenses for the underwriters were also up 14.1 percent (\$1.5 billion). According to the data, this increase in expense reflected a substantial increase in premiums written by agents (an increase of \$1.3 billion). Loss and loss adjustment expenses were down 9.3 percent last year, resulting in net operating gain by

3.3 percent. On a state-by-state basis, 47 states, plus the District of Columbia, showed an increase in fourth-quarter 2015 written premiums compared to the same period in 2014. For the full year, all 50 states plus the District of Columbia recorded increases from 2014 levels. Twelve states were up less than 10 percent, 22 states and D.C., were up between 10 and 20 percent and 16 states were up over 20 percent. In 2015, the industry paid more than \$693 million in claims. This is up slightly from \$680 million in claims paid during 2014.

2015 Full-year Market Share:

- *Fidelity Family (33 percent)*
- *First American Family (27 percent)*
- *Old Republic Family (15 percent)*
- *Stewart Family (12 percent)*
- *Independent Underwriters (13 percent)*

ALTA Announces SMS, Western Technologies Group as Elite Providers

ALTA announced that SMS, a division of First American Professional Real Estate Services Inc., and Western Technologies Group (WTG) have been named ALTA Elite Providers.

ALTA's Elite Provider Program 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.

From title and closing production systems to trust accounting, SMS delivers solutions that span the entire real estate closing process.

SMS offers ALTA members a variety of special discounts:

- *20 percent discount on upfront installation of GreenFolders*
- *10 percent discount on a first year subscription on Rizolv*
- *20 percent discount on full price installation fees*

for StreamLine

- *20 percent discount on a TitleExpress initial purchase training*
- *50 percent discount on the TrustLink setup fee*

WTG provides tideland (riparian rights), flood zone determinations and comprehensive property data reports. WTG developed "visual verification" which is a property boundary overlay on aerial photography using state-of-the-art technology and current maps that identify the subject property in real space. WTG insures tideland and flood searches for errors and omissions to \$2 million per event.

WTG offers ALTA members three complimentary flood searches with the purchase of 10 searches.

For more about ALTA's Elite Provider program, go to www.alta.org/elite.

CFPB Proposes Prohibiting Mandatory Arbitration Clauses

The Consumer Financial Protection Bureau (CFPB) on May 5 proposed rules that would prohibit mandatory arbitration clauses in new contracts that block groups of their customers from suing them.

According to the bureau, the proposal would open up the legal system to consumers so they could file a class action or join a class action when someone else files it. Groups of consumers would have the opportunity to obtain relief from the legal system, and many companies would be incentivized to comply with the law to avoid group lawsuits. Also, the Bureau would be able to monitor the individual arbitration process, providing insight into whether companies

are abusing arbitration or whether the process itself is fair.

The rule only applies to certain classes of providers. The rule explicitly states that services outside the bureau's scope (insurance) or not specifically listed (real estate settlement services) are not part of the rule.

The proposed rules should have minimal impact on the arbitration provision in title insurance policies. Due to ALTA lobbying efforts in 2009-2010, "the business of insurance" is not considered a consumer financial product or service under Dodd-Frank and is outside the bureau's scope except as specifically outlined in RESPA and TILA.

Title Action Network Launches Membership Push

They say there's no time like the present, and that's especially true for signing up to help advance the title insurance industry. The Title Action Network (TAN) is ALTA's 100 percent free grassroots organization aimed at explaining the benefits of the industry to regulators and lawmakers. TAN is currently asking all 12,000 members to help sign up others in your office as ALTA prepares to

convince the CFPB to fix the inaccurate disclosure of title insurance fees on the Closing Disclosure this summer. For each new member that you get to sign up for TAN, you'll be entered to win a new Fitbit Blaze. Simply ask your recruits to list your name in the "referral" line when signing up. Exercise your body and your voice--help us grow TAN today at www.titleactionnetwork.com.

ALTA Awards National Title Professional Designation

Cindy Immonen and Terrie Miller have been awarded ALTA's National Title Professional (NTP) designation and join more than 50 other industry leaders from around the United States who have earned the designation.

The designation recognizes land title professionals who demonstrate the knowledge, experience and dedication essential to the safe and efficient transfer of real property.

Miller joined H.B. Wilkinson Co. in Mt. Carroll, Ill., in 1989 and is currently chief operations officer. Designated an Illinois Title Professional and Illinois Escrow Professional, Miller is active within the Illinois Land Title Association (ILTA) and ALTA membership and real property records



committees. Miller is the fourth NTP designee from Illinois. A full directory of National Title Professionals is available here.

Immonen has more than 25 years of industry experience and



serves as state agency representative for Fidelity National Title Group in Livonia, Mich. She received the Michigan Land Title Association (MLTA) Certified Land Title Professional designation in July 2015. Immonen is a MLTA board member and has chaired the MLTA Education Committee since 2012. She also serves as a trustee on the Clarenceville School Board. She is the second NTP designee from Michigan.

To view the complete list of NTP designees, go to alta.org/ntp/directory.cfm.

House Passes Private Flood Insurance Bill

In May, the House of Representatives unanimously passed H.R. 2901, the Flood Insurance Market Parity and Modernization Act. The legislation is designed to make it easier for private insurers to provide private flood insurance and for lenders to accept those

policies. Currently, flood insurance is provided by the federal government through the National Flood Insurance Program (NFIP).

Under current law, to obtain the lowest federal insurance rate, the NFIP requires homeowners to retain a minimum amount of flood insurance coverage.

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Celebrate National Homeownership Month

June is National Homeownership Month and ALTA invites you to celebrate with us on Facebook and Twitter. Use information and content from our Homebuyer Outreach Program to help explain the benefits of owner's title insurance to homebuyers. We're sharing title insurance and homeowner tips that you can share on your own social media pages.

Social Media Pro Tip: Find Your Business on Yelp!

You've heard of Google-ing yourself (or company), but have you ever searched for your business on Yelp? If the answer is no, do yourself a favor and search today. Monitoring peer reviews sites, like Yelp, will help you manage your online reputation and resolve possible consumer complaints. It's easy to take a negative review "offline" by simply replying to an individual that you will be in touch soon by phone. You are then able to speak to the customer without other online eyes watching

your every move. Additionally, when a customer calls you to thank you for a job well done, encourage them to visit your Yelp account to leave a positive comment for others to see. A little effort goes a long way in reputation 101. If you have any questions about this tip, or have a tip of your own, email social@alta.org.



Homebuyer Outreach Contest

Have a great way you're using material in ALTA's Homebuyer Outreach Program? Share how you're educating consumers about the benefits of title insurance for a chance to win a free registration to an upcoming ALTA event. ALTA staff, PR Committee and HOP Working Group will vote on the entries. First place will win a complimentary registration to ALTA's 2016 Annual Convention, Oct. 4-7 in Scottsdale, Ariz. Second place will receive a free registration to one of ALTA's 2017 Innovation Boot Camps. Email your submissions to communications@alta.org.



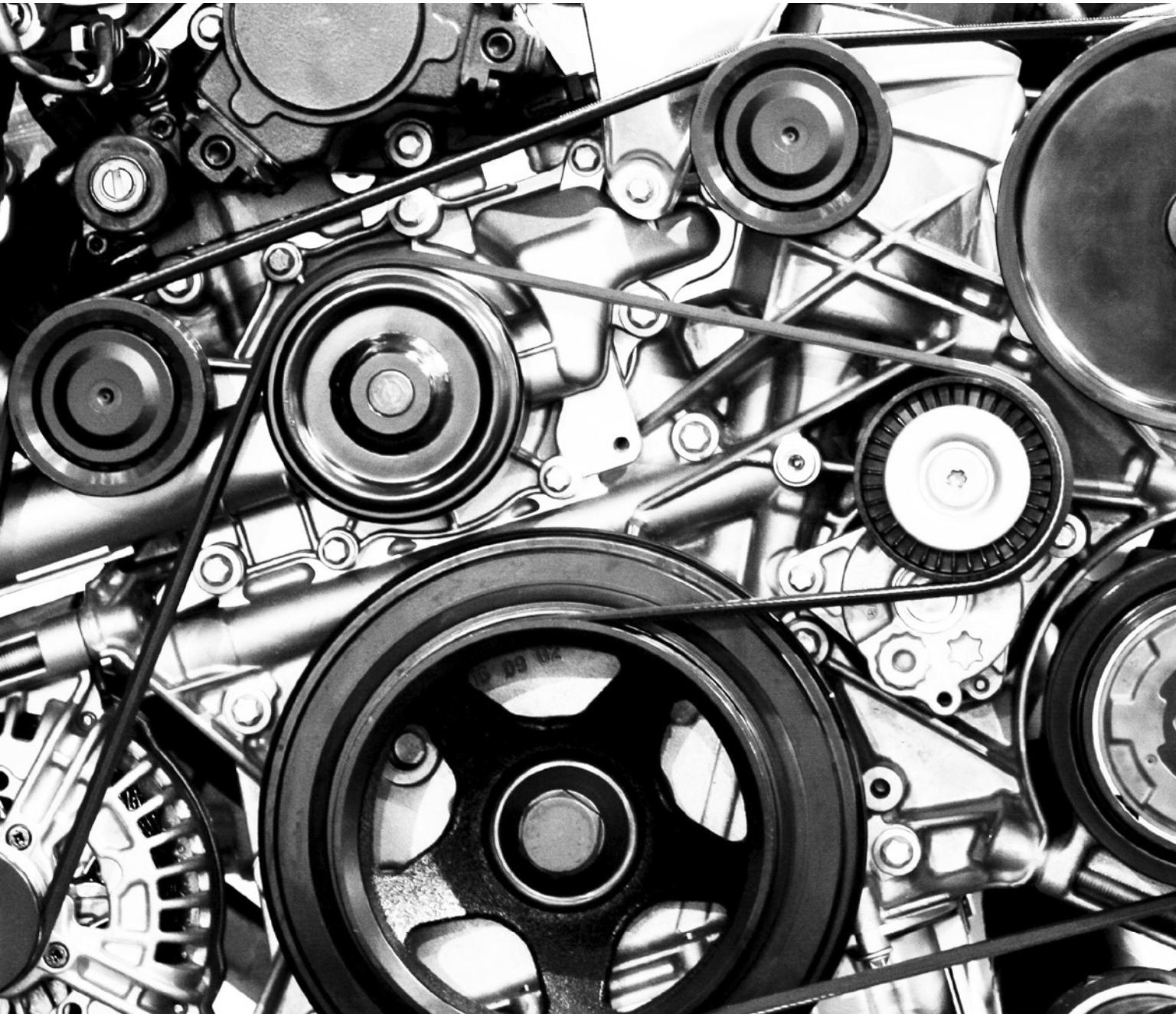
Use ALTAprints.com for Consumer Education

ALTA's newest member benefit, ALTAprints.com, is able to assist your company with all of your consumer education needs. Use this new website, with your ALTA ID and password, to customize materials in the Homebuyer Outreach Program. You can brand all of the material with your own company logo and information at www.altaprints.com.

Homebuyer Outreach Program in Missouri

ALTA's Homebuyer Outreach Program (HOP) is hosting a workshop in Kansas City, Mo., on Aug. 3. For more information and to register, visit <http://meetings.alta.org/hop>.

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OLD REPUBLIC INSURANCE GROUP

Cyber Snipers Zero In on Industry

Title and Settlement Agents Must
Be Vigilant Against Onslaught
of Fraudulent Email Schemes as
Regulator Attention Accelerates

One morning earlier this year, Maureen Pfaff received a random email requesting her title company to wire nearly \$11,000 to a TD Bank in Florida. The general manager and chief financial officer for Olympic Peninsula Title Co. immediately became suspicious because the email came from her father. He wouldn't make a request like this via email. >>

By Jeremy Yohe



“Additionally, the formality of the email and signing it the way they did was a dead giveaway,” Pfaff said.

Realizing it was a scam, Pfaff strung the criminal along, eventually sending something encrypted so she could get an IP address to include in the complaint filed with the FBI. Pfaff created a fake wire transfer notification in an encrypted email, which generated a report when opened.

Pfaff said this was the third fraud attempt the company has experienced in the past six months. “They’ve all been different strategies,” she added.

Pfaff isn’t alone. Title agents and lenders alike are seeing increased reports of attacks across the country. Signaling the growing threat, the Federal Trade Commission (FTC) issued a warning to homebuyers about email and money wiring scams. Hackers have been breaking into some consumers’ and real estate professionals’ email accounts to get information about upcoming real estate transactions.

After figuring out the closing dates, the hacker sends an email to the buyer, posing as the real estate or title company professional. The bogus email says there has been a last-minute change to the wiring instructions, and tells the buyer to wire closing costs to a fraudulent account. The FTC warns consumers that email is not a secure way to send financial information.

Email Fraud Schemes on the Rise

Total losses due to account takeover schemes more than doubled in 2015 while losses related to fraudulent email attacks increased nearly threefold, according to a report from PricewaterhouseCoopers’ Financial Crimes Unit. An account takeover occurs when an attack either obtains

an individual’s personal information—such as user name, password, account number, Social Security number—or impersonates a customer to gain access to bank accounts or payment systems to make unauthorized transactions. According to PricewaterhouseCoopers, between October 2013 and August 2015 this type of fraud netted hackers over \$1.2 billion.

The report says the fastest growing form of account takeover scheme is business email compromise, which uses the hacked or spoofed email account of an employee or customer to initiate a fraudulent transaction. The report says that attackers often research a target’s schedule, waiting until the target is traveling or unavailable for immediate verification. An unsuspecting title or settlement agent receives the email and carries out the wiring instructions, unaware that the email was not legitimate. The funds are then routed to an account controlled by the hacker.

“Account takeover fraud results in reputational damage, loss of client confidence and significant financial liability,” the report said.

Exploiting Human Nature

Verizon’s latest Data Breach Investigations Report also shows phishing schemes picking up dramatically. According to the survey, 30 percent of phishing messages were opened—up from 23 percent in the 2015 report—and 13 percent of those clicked to open the malicious attachment or nefarious link.

Adding to the list of human error are those caused by end users of an organization. Miscellaneous errors take the No. 1 spot for security incidents in this year’s report from Verizon. These can include improper

disposal of company information, misconfiguration of IT systems and lost and stolen assets such as laptops and smartphones. In fact, 26 percent of these errors involve people mistakenly sending sensitive information to the wrong person.

“You might say our findings boil down to one common theme—the human element,” said Bryan Sartin, executive director of global security services for Verizon Enterprise Solutions. “Despite advances in information security research and cyber detection solutions and tools, we continue to see many of the same errors we’ve known about for more than a decade now. How do you reconcile that?”

Don’t Rely on Email to Confirm Wire Instructions

Earlier this year, a new wrinkle in cyberattacks hit the title and settlement industry. An independent escrow company in Southern California received a “legit-looking” email from a lender confirming two wire instructions for a total of \$650,000. Instead of verifying the wire confirmations through the lender’s website, the escrow company trusted the email.

Escrow employees sent \$650,000 to an account supposedly owned by a party that didn’t exist. Unfortunately, the email was a fake. One of the wires was recalled. The second wire was not and the consumer lost \$133,000.

“Title and settlement agents need to know that this can happen to them,” said Bill Burding, general counsel for Orange Coast Title. “When you get a wire confirmation from a lender, don’t disburse off it until you verify it on their website. Companies need a formalized policy of confirming disbursements online.”

Digital TitleNews Extra: Life Cycle of a Data Breach: Know What You Need to Do

Burding said title agents should call their lender if confirming wires online is not an option.

“If your bank doesn’t offer online verification, you shouldn’t be banking there,” he added.

Deliver What You Say

The rash of attacks supports the need for title and settlement companies to implement a system to protect customer data. Whatever system a company employs, it’s important to accurately explain how data is protected. The FTC recently issued a consent order against Henry Schein Practice Solutions, 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 meeting 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. “Strong encryption is critical for companies dealing with sensitive health information,” said Jessica Rich, director of the FTC’s Bureau of Consumer Protection. “If a company promises strong encryption, it should deliver it.”

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. The primary lesson that title insurance and settlement companies should take from this consent order is the importance of choosing secure encryption methods. When choosing software to handle security, pay special attention to the actual encryption details rather than the marketing spin. Steer clear of products that might claim to be secure while not actually conforming to industry encryption standards. 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.

In another action by the FTC, Wyndham Hotels & Resorts in December settled charges that its security practices unfairly exposed the payment card information of hundreds of thousands of consumers to hackers in three separate data breaches. Under the terms of the stipulated order, filed in the U.S. District Court for the District of New Jersey, Wyndham agreed to:

- Implement a comprehensive data security program
- Conduct a Payment Card Industry Data Security Standard evaluation and engage in yearly assessment of the handling of customer payment card information
- Comply with 20 years of compliance to the FTC on the settlement agreement requirements

According to Steve Gottheim, ALTA’s senior counsel, this decision suggests the FTC has authority to go after companies that were hacked, sanctioning them for unfair trade practices instead of the traditional

Gramm-Leach-Bliley Act privacy law.

ALTA's Title Insurance and Settlement Company Best Practices require that title insurance and settlement companies encrypt non-public personal information that is sent electronically. The ALTA Best Practices also requires companies to provide a copy of their privacy policy to customers and to alert customers if a security breach occurs as required by law.

NAIC Gets Involved

The National Association of Insurance Commissioners (NAIC) and state insurance regulators are ramping up efforts to tackle cybersecurity issues. The NAIC's Cybersecurity Task Force adopted the Principles for Effective Cybersecurity Insurance Regulatory Guidance in April 2015. The 12 principles adopted direct insurers, producers and other regulated entities to join forces in identifying risks and adopting practical solutions to protect information entrusted to them. In addition, the NAIC is developing new reporting requirements for insurers to better track cyber insurance policies issued in the marketplace.

Responding to feedback and pressure from ALTA and state regulators, the NAIC's commissioner agreed to hold an extended in-person discussion to address concerns about the association's proposed state model cybersecurity law.

In March, ALTA submitted a letter to the NAIC's Cybersecurity Task Force outlining concerns with the group's draft Insurance Data Security Model Law. ALTA encouraged the NAIC to work with state attorneys general and consider whether states

Training Tips to Help Employees Spot Fraudulent Emails

There are many steps title and settlement companies can take to thwart email schemes and potential account takeovers. To help prevent a business email compromise in particular, PricewaterhouseCoopers, encourages companies to train employees to identify suspicious emails that could indicate a hacked or spoofed account. Here are a few tips:

- Carefully review email headers, domain names in the "From" field of the email, and the "Reply-to" field of emails. For more suspicious emails, employers should review email headers using analyzer software.
- Scrutinize links contained within emails by hovering over the link with the cursor to expose the associated web address. If a suspicious address is revealed, further authentication must be conducted.
- Spot behavioral anomalies in payment requests received via email. These anomalies include requests received at odd hours, payments requested to an unusual person, international wires or unusual payment amounts. Many financial services firms are implementing additional controls—such as telephone call-backs—to confirm the authenticity of higher-risk transactions.
- Test employees by simulating business email takeover and phishing attacks, and adjust training programs to address identified weaknesses. The FTC provides the following tips to help avoid phishing scams:
 - Don't email financial information. It's not secure.
 - If you're giving your financial information on the web, make sure the site is secure. Look for a URL that begins with https (the "s" stands for secure). Instead of clicking a link in an email to go to an organization's site, look up the real URL and type in the web address yourself.
 - Be cautious about opening attachments and downloading files from emails, regardless of who sent them. These files can contain malware that can weaken your computer's security.
 - Keep your operating system, browser and security software up to date.

will pass two different data security laws: one for insurance and a separate one for all other businesses. ALTA suggested that the NAIC host an open conversation about data security that facilitates consensus about our shared goals and pain points. Finally, ALTA expressed concern that the proposal does not adequately take scalability into account. ALTA believes that an insurance-specific data security law could conflict with other state and federal data security laws, making it difficult for title and

settlement agents to comply with all their legal and contractual obligations.

"We are concerned that the Preliminary Working and Discussion Draft would not establish a single standard for consumer protection, which is likely to create confusion and conflict among various regulators, state attorneys general, courts, industry and consumers," Justin Ailes, ALTA's vice president of government and regulatory affairs, wrote in the letter. "As currently written, the Preliminary Working and Discussion

Draft appears to take the most severe penalties, adds an extensive additional regulatory burden and private rights of action under state regulation. No state today approaches data security in this manner.”

As it continues to consider a standard for data security and investigation and notification of a breach of data security, ALTA encourages the NAIC to consult existing state and federal requirements that licensees are already required to follow.

“It may also be prudent for the NAIC to engage with and solicit comment about the Preliminary Working and Discussion Draft from state and federal regulators including state attorneys general, the

engineering, such as an employee using corporate account information on public social networks.

CFPB Licks Its Chops

Sending a warning shot to the industry as to its expectations, the CFPB in March took action against online payment platform Dwolla for deceiving consumers about the safety of its online payment system. The CFPB ordered Dwolla to pay a \$100,000 penalty and fix its security practices.

The CFPB cited its authority under the Dodd-Frank Act to protect consumers against deceptive practices and false representations. This was the bureau’s first data security action, and builds upon advances made by

employees on company data security policies and procedures, and on how to protect consumers’ sensitive personal information. Dwolla also was ordered to fix any security weaknesses found in its web and mobile applications, and to securely store and transmit consumer data.

Rajesh De, the former general counsel to the National Security Administration, now leads Mayer Brown’s cybersecurity practice. According to De, the case highlights the standards that regulators are expecting from companies with regards to data security, such as the development of written security plans and risk assessments.

Stop and Take a Breath

While many of the fraudsters target real estate agents or homebuyers involved in a purchase transaction, Lisa DeWolf, senior vice president and director of operations for Trident Land Transfer Co., shared details on a recent attack involving a seller’s mortgage payoff.

The title company received a mortgage payoff statement via fax from an unfamiliar lender in Oregon. As was typical with payoff statements, the incoming document was three pages long and printed on company letterhead. The settlement was scheduled and the closer began communicating by email with the fraudster. The thief informed the closer that “the lender’s account was under upgrade and would she kindly respond to his email to receive the new wiring instructions.” The closer responded and eventually received a revised payoff with a few minor changes:

- ♦ The amount the closer was required to collect from the seller and wire to the bank increased by a little more than \$500.

“Cyber criminals know that this is a very busy time of year for our industry and our teams are juggling many balls at once. They are counting on us to drop one.”

Federal Trade Commission (FTC), and Consumer Financial Protection Bureau (CFPB),” according to Ailes.

Interestingly, a new report from SecurityScorecard shows that U.S. federal, state and local government agencies rank last in cybersecurity when compared against 17 major private industries, including financial services, retail and health care.

The analysis measured the relative security health of government and industries across 10 categories, including vulnerability to malware infections, exposure rates of passwords and susceptibility to social

several other agencies, including the FTC. The consent decree said Dwolla falsely claimed its data security practices “exceed” or “surpass” industry security standards and claimed information was “securely encrypted and stored.”

“Rather than setting ‘a new precedent for the payments industry’ as asserted, Dwolla’s data security practices in fact fell far short of its claims,” the CFPB stated in its action letter. “Such deception about security and security practices is illegal.”

In addition to paying the penalty, the bureau ordered Dwolla to train its

- ♦ The bold, upper-case sentence informing the company to call the lender to verify payoff information from the first page and replaced with new wire instructions. In addition, the lender signature and phone number were not on the revised payoff statement.
- ♦ Page three, which included the breakdown of a fee totaled on page one, was typed in a different font. At a glance, this was the most noticeable red flag.
- ♦ The sender's email address changed from *firstname.lastname@bankname.com* to *firstnamelastnamebankname@gmail.com*. This shift from a legitimate corporate email address to Google's free email

service was another obvious area of concern.


Fortunately, the closing was postponed. The new closer assigned to the closing noticed the many, subtle red flags. Although Trident Land Transfer has many procedures in place—including secure email and a stringent policy around wires—it was the lender's email that was hacked. DeWolf encourages stringent training on the different scenarios for everyone involved in closings. If it weren't for the keen eyes of Trident's closing team, this situation could have had a very different outcome for the company.

"Anyone moving too quickly may have followed through with the fraudulent instructions," DeWolf said. "These criminals

are becoming very clever, cutting and pasting existing verbiage from legitimate correspondences into their communication to you."

The moral of the story is that everyone needs to remember to slow down and pay attention to the details.

"How many people, and especially banks, do you know who change their bank account information at the last minute? Not many. Last-minute changes in wiring instructions are a huge red flag," DeWolf said. "This illegal activity on our industry is very lucrative for these crime syndicates. Cyber criminals know that this is a very busy time of year for our industry and our teams are juggling many balls at once. They are counting on us to drop one." ■



NEED MORE CASE LAW?

The American Land Title Association offers several legal publications that are the favored research material for title professionals and counsel from around the country. These publications contain practical analysis that is valuable to claims administrators, coverage counsel, underwriters, agency managers, examiners and escrow officers.

www.alta.org/publications/titlelaw

Title Insurance Law Newsletter

This monthly report covers the latest news and decisions from around the country, teaching valuable lessons on title examination, closings and escrows, agent-underwriter disputes, RESPA violations and how the policy is interpreted.

Title Law Quarterly

Title Law Quarterly, published once every quarter, provides information on key lawsuits affecting the land title insurance, current developments in real property law and changes to ALTA policy forms.

Title and Escrow Claims Guide, 2016 Edition

The Title and Escrow Claims Guide is the most complete and readable explanation of the policy's terms, how claims are handled, duties of closers and escrow companies, and disputes between agents and underwriters. The content is also a great resource used by title companies for training of new employees in claims, underwriting and title examination.



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14 Things Your Organization and Employees Can Do to Prevent Data Breaches

Staff Education Important as 95 Percent of All Attacks Involve Human Error

Feeling safe about your organization's personal data because of encryption standards? Don't fool yourself into a false sense of security. Managing cyber risk is a multi-faceted, whole-organization effort that requires implementation from the top levels down. In IBM's Security Services 2014 Cyber Security Intelligence Index, which analyzed cyberattack and incident data, more than 95 percent of all incidents cited "human error" as a contributing factor to the attack.

The list of potential human-error risk factors is longer than expected:

- Administrator system misconfiguration
- Not updating systems appropriately
- Not managing system patches
- Default password usage
- Default user ID usage
- Lost devices
- Misplaced devices

- Unlocked devices
- Incorrect disclosure procedures

Though this list is not exhaustive, it emphasizes the importance of cybersecurity education for management and employees so that organizations are able to mitigate data breaches caused by human error.

1. Education from the Top Down:

This is number one for a reason. Individuals in management may think that because they have an incredible IT security director at the helm, duties regarding risk mitigation are fully out of managements' hands. However, ensuring that management and employees fully understand the potential cybersecurity risks innate to your organization is important in preventing risks.

The development of policies and procedures on cybersecurity is essential, and educating employees both new and old on

these policies and procedures is critical. Because the cybersecurity landscape is constantly changing, regularly educating management and employees on updated cybersecurity policies and procedures is essential in mitigating risk. In addition, your organization should inform employees about new scams or potential new risks as they arise—for example, new phishing scams or websites with potential vulnerabilities.

- 2. Hire Well:** Strong security starts with great personnel, which is why the hiring process is important. While individuals with experience can be beneficial to an organization, professionals who have a deep understanding of the current risk landscape can be invaluable to an organization while trying to implement security controls. When recruiting individuals, management should make certain that employees understand the concepts behind both preventing breaches and managing your company response if a breach does occur.

In addition, management should be sure to maintain communication lines with their security and compliance team in order to ensure that all potential threats are being monitored carefully.

3. Develop an Exit Strategy: Even if you hire good people, sooner or later you're going to lose a few. Because of this, it's essential that you have clear procedures for when employees leave your organization. This includes changing passwords, ensuring that computers and personal devices no longer have sensitive information available on them and developing contracts that include legal repercussion for sharing or utilizing sensitive data.

4. The Less Data, the Better: Since cyber criminals can only steal information that an employee or organization has access to, one of the major ways to minimize risk is to limit data availability:

- ♦ Reduce the amount of employees that has access to at-risk information.
- ♦ Don't collect information that isn't relevant to your business.
- ♦ Reduce the number of places where data is physically stored.
- ♦ Only grant data access on an as-needed basis, and revoke access as soon as information is no longer necessary.
- ♦ Purge data early and often! (More on this next.)

You minimize potential risk when you minimize the amount of access that individuals have to data.

5. Purge Your Data Properly: It isn't enough to simply purge your data. You have to get rid of sensitive data in a manner that actually prevents further access.

Too often, employees think they are getting rid of all of their data when they move files from

their desktop to their computer's recycle bin—not realizing that copies of the files may still exist on their hard drives. By teaching employees' proper data disposal techniques, you're able to minimize the risk of having that data get into the wrong hands.

6. Monitor Your BYOD Programs: BYOD, or Bring Your Own Device, is a program where employees provide their own technology (think computers, tablets, cell phones, etc.) for work. Many organizations have moved to this type of program so that employees are able to use technology that they have a better understanding of. This reduces training time and increases productivity.

However, one of the major risks is that employees do not feel as though they need to be following organizational policies when they are using their "personal" device. The problem is, when devices are used for both work and personal activities, sensitive data can be compromised. In addition, these programs leave IT administrators frustrated, as they have to understand necessary updates and patches for a litany of different devices instead of just a few.

By implementing strong BYOD policies that force employees to fully understand the risks inherent with the utilization of their own devices, organizations are able to prevent potential cyberattacks. These programs should emphasize or consider:

- ♦ Password and device-encryption requirements

- ♦ Update and patch requirements
- ♦ Lost or misplaced device notification for emergency response and remote data-wiping
- ♦ Utilization of tracking software
- ♦ Establishment of secure app workflows
- ♦ Anti-malware software
- ♦ Jailbreak prevention
- ♦ Sandboxing
- ♦ Device partitioning

The creation of appropriate BYOD management and policies allow for the program to work successfully, instead of becoming a pain point for organizations.

7. Secure Your Networks:

Employees are constantly on mobile devices these days, and often have their devices set to "Automatically Connect" to the closest Wi-Fi available. This leaves security professionals floundering, as there have been more than a few counterfeit Wi-Fi networks that pull sensitive information from devices connecting to these "Hot Spots." Ensure the security of your network by investing in a personal or corporate VPN. That way, all of the data that is being utilized is appropriately encrypted at the source.

8. Update Software with All Patches and Updates: Software companies constantly update their products in order to ensure that their apps and programs are secure. When hackers and auditing companies find new vulnerabilities in software, the software companies issue patches and updates to fix these vulnerabilities. It's critical that

administrators push patches and updates in a timely manner to close the loop on known issues.

9. Develop “Appropriate Usage” Guidelines for Company Technology:

Educate employees on the appropriate usage of organizational technology. This includes when, where and how to log in to accounts, how to check their connection to ensure it is reliable and secure, and when not to use devices.

10. Hold Outside Vendors to the Same Standards:

You can help prevent cyber-risk by only working with organizations with the correct security and regulatory designations, by ensuring all of the appropriate controls are in place. While it may be cheaper to hire organizations that hold no designations, or function outside of governing bodies with strict regulation, this may come at a steep price when consumers are lost due to a data breach. At the end of the day, if your vendor makes a mistake—it is your clients on the line, not just theirs. At the end of the day, if your vendor makes a mistake—it is your clients on the line, not just theirs.

11. Prepare for the Worst:

Establishing a disaster management plan allows your organization to be prepared if the worst were to happen. While your preparations can help reduce the risk of cybersecurity breaches, your risk is never fully mitigated. Being prepared allows your team to have a game plan to prevent the breach from growing or

causing unnecessary customer backlash.

12. Test Your Disaster Management Plan:

Put your breach protocol to the test with a mock disaster. See how well your team is prepared for a potential breach, and troubleshoot problems with your protocol before they become a reality.

13. Audit Your Organization Regularly:

By auditing your team on its practices, you will be able to see potential problems that could lead to future breaches. This will allow your organization to modify policies and protocol prior to an issue.

14. Notify Early and Appropriately:

If your team even vaguely believes that there was a potential breach, communicate with your organization’s security management team and notify the appropriate authorities immediately.

The sooner that your team is able to respond to an incident, the greater the chance you’ll have in being able to manage the potential damage to your organization and its clients. Reporting unusual or suspicious activity can be the difference between a major breach and a minor one. ■



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Report Cyber Crimes

The frequency of phishing schemes is growing at an alarming rate. ALTA encourages members who receive these types of emails to report the incident to the FBI’s Internet Crime Complaint Center, which is used to track trends in criminal activity, at www.ic3.gov.

Additionally, the FTC encourages companies to forward phishing emails to spam@uce.gov — and to the company, bank or organization impersonated in the email. Reports are most effective when they include the full email header, but most email programs hide this information. To find out how to include it, type the name of your email service with “full email header” into your favorite search engine.

You also can report phishing emails to reportphishing@antiphishing.org. The Anti-Phishing Working Group — which includes ISPs, security vendors, financial institutions and law enforcement agencies — uses these reports to fight phishing scams.

To file a report with FTC, go to www.ftc.gov/complaint.

We're Certified, Now What? The Value of Ongoing Monitoring

Following a Five-step Process will Help Prevent
Potential Risks Down the Road

BY MATTHEW REKERS

After buying a car, how many of us believe that we can drive it worry-free for two years without regular maintenance? Although it's an appealing idea, the reality is that regular maintenance keeps our vehicles operating at peak condition. This same approach should be considered when a title or settlement agent obtains certification to ALTA's Title Insurance and Settlement Company Best Practices. Since ALTA has suggested that a Best Practices certification be updated every two years—after we overcome the excitement of attaining certification—we should maintain regular monitoring procedures to ensure compliance during the interim period. Ongoing maintenance of your compliance program provides you, your clients and your lenders with the confidence that your organization is prepared for whatever may lie ahead.

The Benefits of Ongoing Monitoring

Changing your car's oil is a key element of a vehicle maintenance program to help you avoid costly repairs. Likewise, monitoring your compliance posture helps you mitigate the costs of non-compliance, while keeping your organization running at its optimal performance. So, what are some of the likely outcomes of monitoring your Best Practices compliance during the two years between your certifications?

First, compliance monitoring can help your organization remain efficient. Since pursuing certification, you have developed Best Practices policies and procedures that likely resulted in changed processes. These new processes may have modified workflows that had been in place for long periods of time. Ongoing monitoring of your Best Practices compliance program is intended to identify compliance disruption due to the altering of your new

organizational processes. This disruption may adversely impact others who are required to prepare reconciliations or record documents. However, by monitoring these regularly, you can be confident that your organization's new processes are performing optimally.

Second, by maintaining your compliance, you decrease your risk of exposure. When you establish your organization as having adopted Best Practices, you are asserting the standard to which your organization adheres. When studying organizations that have had a data breach, one often finds a correlation between efforts to protect customer information and the significance of the penalty assessed. While achieving Best Practices certification will most likely be looked upon favorably, maintaining the program after receiving a certification further demonstrates your commitment to protecting customer information and could result in less severe penalties in the event of a breach.

Finally, maintaining your Best Practices compliance allows you to retain your status on a lender's approved vendor listing. Through ongoing monitoring of your Best Practices compliance, you can avoid the potential cost of losing a key business partner whose confidence in your organization's compliance with industry standards has been shattered by your failure to remain compliant.

What Does a Monitoring Program Look Like?

Now that we have identified the benefits of ongoing monitoring, how do you create a monitoring program appropriate for your organization?

Based on our experience, an effective framework for ongoing maintenance of Best Practices should include at least the following steps:

1. Obtain owner/senior management buy-in
2. Designate employee(s) responsible for conducting the ongoing monitoring
3. Develop and approve ongoing monitoring and documentation procedures
4. Follow up and correct any detected issues
5. Engage management in the periodic review of the program

The very existence of a maintenance program reinforces that management is watching, setting expectations that necessary corrective action will be taken when a problem occurs.

Step Two: Designate employee(s) responsible for conducting the ongoing monitoring

Senior management should assume accountability for the maintenance program, but the actual workings of the program should take staff abilities and time constraints into account when assigning program responsibilities. Best Practices have a way of permeating every aspect of your business, so it is important that you find and assign competent personnel who have a clear understanding of Best Practices

and also can provide effective oversight.

Step Three: Develop and approve ongoing monitoring and documentation procedures

Have you taken your car through an oil change station lately? If the station is like mine, the technicians immediately start calling out their inspection results and notifying each other as to how they are progressing along a well-rehearsed, documented process. The same approach should be adopted for employee(s) designated to oversee your maintenance process. In developing your monitoring procedures, you will need to address explicitly which activities must be monitored. An effective way to ensure that you are maintaining all of the Best Practices is to use the ALTA Best Practices Framework Assessment Procedures version 2.1 as a benchmark. And most importantly, keep all of your tracking records.

Management should take into consideration the risk associated with activities when determining how often to conduct monitoring. Developing a checklist or tracking tool to effectively document your maintenance testing on a daily, monthly, quarterly or annual basis will provide sufficient guidance for employee(s) you've made responsible for maintenance. Discuss your approach with the firm that conducted your assessment. For example, our firm has developed a Best Practice Monitoring Tool that we provide to our clients post-certification to help them develop their ongoing monitoring process.

Implementing an ongoing monitoring program after certification helps your organization steer clear of potential risks down the road.

Step One: Obtain owner/senior management buy-in

Buy-in from senior management is paramount. Whether you're just implementing Best Practices or maintaining your certification, proper monitoring is difficult without managerial commitment and support.

Leadership must develop a culture of compliance by setting the objectives of the compliance maintenance program.

and are as independent from the processes they are monitoring as possible. These participants and all employees need to be empowered by management to report any issue openly and directly to senior management or the owners without repercussions. It is important to ensure that whoever monitors Best Practices compliance in your organization has the appropriate capabilities, objectivity and authority,

Step Four: Follow up and correct any detected issues

The goal of your monitoring process should be to fine-tune any Best Practices activities that are outside compliance standards. This step is a pivotal part of your Best Practices program.

Your business is at risk of potential exposure if it is determined that you did not take reasonable measures to achieve compliance once failures or other deficiencies were identified. The outcome of monitoring must go beyond identifying actual or potential non-compliance—management must take the necessary corrective action. Such action requires you to determine the root cause of non-compliance.

For instance, if an audit turns up transactions that resulted in a customer getting a policy later than the recommended 30 days, the monitor should determine why this happened. Only then can an appropriate corrective solution be determined.

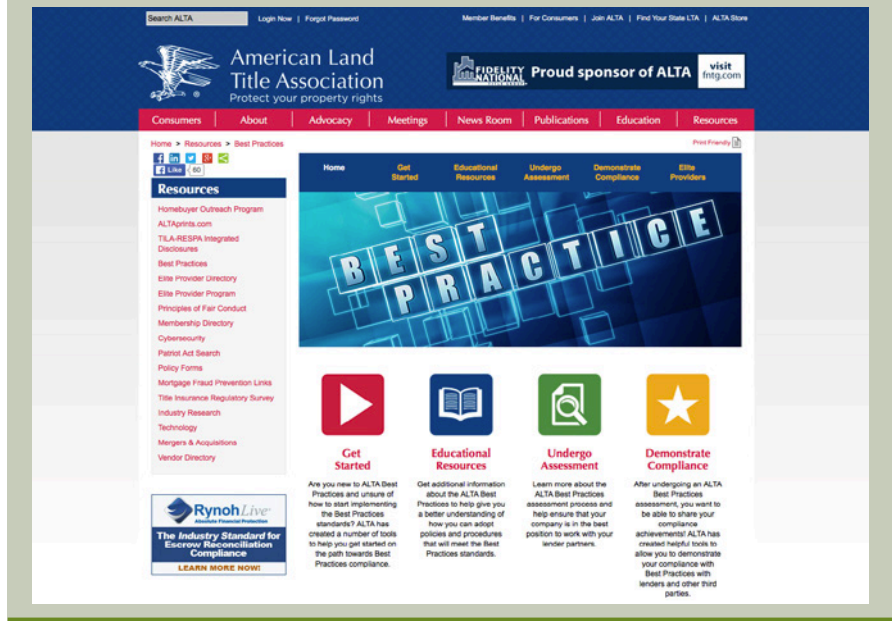
Step Five: Engage management in the periodic review of the program

Successful monitoring processes start and end with management involvement. Step one emphasizes getting senior management buy-in and places oversight accountability squarely on the shoulders of management.

Although the monitoring employee(s) should report any potential non-compliance directly to management, company executives also should regularly review the monitoring documentation to ensure that the guidelines developed in step three are followed.

ALTA Updates Best Practices Webpage

ALTA recently completed the launch of its new Best Practices webpage (www.alta.org/bestpractices). The new design helps companies better identify the Best Practices tools and resources that will be helpful to them, depending on the stage of their Best Practices implementation. Members have reported a better user experience using the new webpage, telling us they find it easier to locate material.



Since Best Practices compliance involves virtually every facet of an organization, it is crucial that management be involved with administering necessary corrective actions.

Time to Hit the Road

The intent of third-party certification is to instill in your customers and lenders the confidence that your organization operates according to industry standards and properly protects consumer information.

Therefore, implementing an ongoing monitoring program after certification helps your organization steer clear of potential risks down the road. Compliance with Best Practices

can't just be something you do every two years.

Instead, we should maintain our compliance efforts like we maintain our cars. Just as a well-maintained car will give you confidence as you drive the open road, a well-maintained compliance program ensures your business is upholding the industry's highest standards. ■



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CFPB to Reopen Rulemaking for TRID

ALTA Tells Bureau to Correct Inaccurate Disclosure of Title Premiums

Responding to concerns raised by ALTA and other trade associations about the TILA-RESPA Integrated Disclosures (TRID or Know Before You Owe), the Consumer Financial Protection Bureau (CFPB) announced plans to provide further guidance and open a new rulemaking period.

“We recognize that the implementation of the Know Before You Owe rule poses many operational challenges,” CFPB Director Richard Cordray wrote in a May letter to joint trade associations. “We also recognize that implementation is particularly challenging because of the diversity of the participants, from small to large financial institutions, mortgage brokers, real estate brokers, and title companies, through warehouse lenders, investors, due diligence firms, and rating agencies, whose perspectives may vary as to what compliance under the rule requires.”

Because of this, the CFPB has started drafting a Notice of Proposed Rulemaking (NPRM) on the Know Before You Owe rule. Cordray wrote that the bureau hopes to issue the

NPRM in late July and looks forward to receiving industry comments.

Corrective rulemakings are fairly common and typically occur about six to 12 months after a major regulatory change. Previously, the bureau issued cleanup rules for the ability-to-repay, mortgage servicing and electronic funds transfer rules. The NPRM will likely come with a 30- or 45-day comment period. Prior to releasing the NPRM, the CFPB plans to meet with ALTA and other trade groups to attempt to help them determine the scope of the proposal. Even with this outreach, late September would be the earliest that the bureau could finalize its rulemaking.

ALTA expects the rulemaking to focus on two main issues:

It will likely formally incorporate much of the informal oral guidance provided by the bureau in its webinars into the official staff commentary. This will allow the guidance to receive judicial deference and make it something the industry can more strongly rely upon.

The rule will likely address the growing question of when creditors can use the Closing Disclosures

to reset tolerances when a closing is delayed. Known colloquially as the “TRID black hole,” there are a number of questions around the timing and ability of lenders to reset tolerances, leaving many lenders in the unenviable position of having to absorb increased costs or deny loans, and restart the whole process if there is a delay in excess of a week.

Cordray agrees that adjustments to portions of the regulation text and commentary would provide “greater certainty and clarity.” The director wrote in the two-page letter that regulators “will continue to be sensitive to the progress made by those entities that have squarely focused on making good-faith efforts to come into compliance with the rule.”

ALTA took the opportunity to remind the bureau that the disclosure of title insurance premiums remains one area that needs corrected.

“ALTA’s primary goal for proposed adjustments to TRID this July is ensuring consumers receive clear information about their title insurance costs on the closing disclosure,” said Michelle Korsmo, ALTA’s chief executive officer. “The current disclosure calculation is inconsistent with the Bureau’s mission to inform consumers about the true costs of their real estate transaction.”

“ALTA appreciates Director Cordray and the CFPB stepping up to the plate and committing to provide more clarity on TRID,”

Korsmo continued. “We value their openness in this process moving forward. We have worked closely with the Bureau for over five years on TRID. We are committed to continuing our conversation with Director Cordray and the CFPB staff to correct the calculation of title insurance policy premiums on the mortgage disclosures this summer.”

The bureau hopes to continue to receive concrete examples about technical problems with the rule. While anecdotes help frame the issues, the CFPB is looking for detailed information to help decision-makers understand and evaluate how to best provide guidance. A key TRID issue for mortgage originators and secondary market investors is the legal liability due to errors on the disclosures. Secondary market investors have rejected mortgages because of fears of being sued down the road due to errors.

U.S. Senator Bob Corker (R-Tenn.), a member of the Senate Banking Committee, also applauded the CFPB’s decision to reopen TRID for public comment. In March, Corker sent a letter to Cordray requesting increased clarity regarding the TRID rule. Corker also questioned the director about the regulation during a Senate Banking Committee hearing, asking if the CFPB would consider steps to alleviate confusion.

“These new mortgage disclosure requirements have created some challenges for consumers and institutions,” said Corker. “I commend Director Cordray for taking this important step to provide more clarity.

U.S. Rep. French Hill (R-AR) said he was thankful that the CFPB acknowledged problems with TRID implementation, but added “it should

CFPB Says Owner’s Policy May Be Disclosed as Negative Number Under TRID

During a webinar on April 12, the Consumer Financial Protection Bureau (CFPB) detailed how fees for owner’s title insurance should be disclosed.

Specifically, the CFPB addressed this question submitted by ALTA:

The calculation of the owner’s title policy premium (in a purchase transaction when owner’s and lender’s policies are issued simultaneously) in accordance with the rule might result in a negative number. Does the creditor disclose this negative number for the owner’s title policy on the Loan Estimate and Closing Disclosure?

Dania Ayoubi, counsel in the CFPB’s Office of Regulations, said that in this situation, the creditor would disclose the premium for the owner’s policy as a negative number.

“When a simultaneous issue rate or discount is used—mostly in purchase transactions—the cost of an owner’s title insurance policy is disclosed as the incremental cost of that owner’s title insurance beyond the standard non-discounted cost of the lender’s title insurance policy,” Ayoubi said. “When disclosed in this fashion, the disclosure conveys to the consumer that it is less expensive to purchase both owner’s title insurance and lender’s title insurance together than it is to purchase just a lender’s policy by itself.”

She referenced Comment 37(g)(4)-2 of the rule, which states “The premium for an owner’s title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender’s and an owner’s policy is calculated and disclosed pursuant to § 1026.37(g)(4) as follows:

- The title insurance premium for a lender’s title policy is based on the full premium rate, consistent with § 1026.37(f)(2) or (f)(3).
- The owner’s title insurance premium is calculated by taking the full owner’s title insurance premium, adding the simultaneous issuance premium for the lender’s coverage, and then deducting the full premium for lender’s coverage.”

Ayoubi added that there are no provisions in Regulation Z that would prohibit the cost of owner’s title insurance from being disclosed as a negative number.

not have taken seven months to do so.”

Hill, along with Brad Sherman (D-Calif.), sponsored the Homebuyers Assistance Act (H.R. 3191). This bill would have created an official hold-harmless period for companies making good-faith efforts to comply with TRID. The U.S. House of Representatives in October passed the bill by an overwhelming bipartisan vote of 303-121.

“Implementation issues were not unforeseen, which is why the House overwhelmingly passed my bill, the Homebuyers Assistance Act, last October,” Rep. Hill added. “I remain committed to ensuring CFPB works with the real estate industry to provide much-needed guidance it can rely on to best serve those hoping to achieve the American dream of home ownership.” ■

The Title Industry's Great Defender

From RESPA and Controlled Business to the Lender-pay Model and Non-title Products, Sheldon Hochberg Leaves a Legacy Protecting the Industry

Many working in the title industry today may not remember what spawned the passage of the Real Estate Settlement Procedures Act (RESPA) of 1974. Sheldon Hochberg can tell the story like it was yesterday.

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

In 1972, the joint HUD/VA report alleged there was a lack of competition among settlement service providers and that charges were inflated due to kickbacks and referral fees. The report recommended that Congress allow HUD and the VA to prescribe maximum allowable settlement charges in FHA and VA-assisted transactions. HUD proposed maximum allowable charges for six settlement items in six metropolitan areas—including title insurance and related charges—with the intention

of rolling out a similar approach nationally.

That same year, *The Washington Post* ran a five-day, front-page series of articles describing an alleged system of kickbacks, referral fees and lack of transparency in residential transactions in Washington, D.C., Virginia and Maryland. An editorial supporting federal legislation culminated the series.

Led by William Proxmire (D-Wisc.), then the chair of the Senate Banking Committee, federal rate legislation covering all residential real estate transactions passed the Senate and had been reported out of the Housing Subcommittee of the Housing Banking Committee. That's when an ad hoc group of 20 underwriters hired Tom Finley and Hochberg—who were with the law firm Sharon, Pierson, Semmes, Crolius & Finley—to fight the legislation.

With Finley and Hochberg drumming support on the Hill and from other trade associations, Congress ultimately decided not to regulate rates directly but to address the problems that might be causing

unduly high settlement service charges. “Our advice was that you can't fight and defeat this,” Hochberg said. “We needed an alternative to get support from the House and Senate.” With the 1974 passage of RESPA, Congress opted for a statute designed to provide for more “advance disclosure to home buyers and sellers of settlement costs” and eliminate “kickbacks or referral fees” that can drive up settlement costs.

According to Hochberg, “RESPA was the compromise legislation we developed to convince members of Congress that it was better to address directly the abuses that were causing the problems, rather than imposing a massive and unworkable scheme of federal rate regulation across the country on all settlement charges.”

The battle over federal rate regulation of title and other settlement service charges and the eventual passage of RESPA were the first of many issues on which Hochberg defended the industry during a law career that spanned more than four decades. Hochberg would go on to represent ALTA on issues regarding controlled business arrangements, the lender-pay model, the fight against alternative non-title products, tribal land claims and ALTA's Principles of Fair Conduct, among others. He retired from the law firm Steptoe & Johnson LLP in December.

Parker Kennedy, who served as ALTA's president in 1993-94, described Hochberg as knowledgeable



▲ Sheldon and Roberta Hochberg during a recent trip to Australia.

on any topic affecting the title and settlement services industry.

“He has a very good ability to be an advocate of a position without offending anyone because his opinions were based on the state of the law, and they aren’t clouded by his personal opinions,” Kennedy said. “The toughest legal issues Sheldon addressed in my day had to do with controlled business and RESPA. We could always count on him to steer us in the right direction.”

Immediately following Kennedy as ALTA’s president, Mike Currier remembered looking forward to hearing Hochberg explaining a serious topic in a way that the subject could be understood.

“Along with his great legal and speaking abilities, he is a tough competitor,” Currier said. “We faced each other on the golf course numerous times. Our desire to beat one another equaled that of (Arnold) Palmer and (Jack) Nicklaus to the point that we designed a wall plaque and the loser of the current match is required to keep that plaque on his wall until hopefully winning the next

match. I sadly must admit that said plaque is hanging on my wall.”

Serving as ALTA president a decade after Kennedy and Currier, Mark Bilbrey lauded Hochberg’s service to the association and the industry with the same sentiment.

“Sheldon was the guiding legal force and regulatory stalwart for ALTA, not only during my years as president but for many years prior and following that time,” said Bilbrey, ALTA’s 2004-2005 president. “He kept the association in the best possible position on multiple challenging issues, while being a constant and dependable sage for advice, and an incredible friend and mentor.”

Thoughts on the Future

More than 40 years later since passage of RESPA, the industry now answers to the Consumer Financial Protection Bureau (CFPB), which was created by the 2010 Dodd-Frank Act. The bureau has actively enforced RESPA since it was established and is currently in a legal battle with PHH Corp. over Section 8 of RESPA. Despite the recent enforcement actions and litigation, Hochberg

doesn’t think the CFPB has changed how regulators enforce RESPA.

“The fact that the CFPB looks at RESPA issues from the consumer’s standpoint is no different from the way HUD looked at RESPA issues and enforcement. Part of the problem over the years is that too many members of the settlement services industries—lenders, real estate brokers/agents, attorneys and many title companies—did not look at RESPA issues from the consumer’s standpoint. Had they done so, these industries might not have faced the legal, political and consumer problems that they have had to deal with.”

A frequent question Hochberg was asked when giving speeches to the title industry on RESPA was “The rules are so complicated and ambiguous—how can I tell when an arrangement may be in violation of RESPA?” His advice then remains good today.

“Ask yourself, how would you feel if your local newspaper ran a feature story on the front page about the deal or arrangement? If you would not want your mother, or wife, or children to read that article, the chances are high that the deal or arrangement may be in violation of RESPA or some other law,” Hochberg said.

Many of the same battles and issues Hochberg saw the industry experience over the past four decades remain. The industry’s role in facilitating millions and millions of real estate transactions is frequently misunderstood and muddled by concerns about business practices that “give the industry a black eye.”

“How to avoid these black eyes in the future is something that individual companies need to come to grips with,” Hochberg said. “It will not be easy, and may require a major shift in thinking and in business practices.” ■

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Underwriters Report First-quarter Earnings

Companies Continue to Make Progress Assimilating TRID into Operations

Fidelity

Fidelity National Financial reported that its title insurance group posted pre-tax earnings of \$142 million during the first quarter of 2016. This compares to \$141 million during the same period a year ago.

Bill Foley, chairman of Fidelity National Financial, described the latest results as a solid start “to what we expect to be another successful year.”

“Given the normal slow first quarter seasonal pattern, a nearly 10 percent pre-tax title margin is a strong historical first quarter performance,” he said. “TRID implementation has had a negative impact on our closing efficiency ratio as we continue to carry higher than normal head count to help our customers navigate the new closing process.”

During the company’s earnings call, Randy Quirk, Fidelity’s CEO, mentioned that personnel costs remained elevated due to the TRID rule. Personnel costs were \$506 million for the title group in the first quarter. This was up from \$333 million during the same period in 2015.

“We expect the impact to slowly improve in the second half of the year as the industry adjusts to the new closing process and makes better use of available technologies,” he added. “(TRID is) a complicated piece of legislation, but we are doing it right and we are making sure that we are in compliance.”

The company’s direct title operations opened 8,339 orders per day during the latest quarter compared to opening 9,475 orders during the first quarter of 2015. Fidelity reported it closed 5,194 orders per day during the first quarter of 2016 versus 5,656 closed orders per day for the first quarter of 2015.

On the agency side, Foley said the company has made a push to acquire “good agents that are significant in size” after shedding agents from 2007 to 2014.

For the entire quarter, Fidelity’s direct operations opened 517,000 orders and closed 322,000 orders. This compares to 578,000 open orders and 345,000 closed orders during Q1 2015.

During the latest quarter, Fidelity’s title group paid \$40 million in

claims—a decrease of \$20 million from the first quarter of 2015.

First American

First American Financial Corp. reported that its title insurance and services segment posted pre-tax income of \$87.7 million. This compares to \$69.5 million in pre-tax income during the same period a year ago.

“Our first-quarter financial results marked a good start to the year, with a strong pre-tax title margin of 8 percent and net income growth of 40 percent,” said Dennis Gilmore, chief executive officer at First American Financial. “Largely driven by higher fees per file, our direct purchase revenue grew by a healthy 9 percent. I’m optimistic that we will continue to see improvement in the housing market as we enter the spring selling season.”

During the latest quarter, First American’s direct operations opened 302,900 orders and closed 193,100 orders. This compares to 337,000 opened orders during Q1 2015 and 207,600 closed orders.

Reflecting a commercial market that has slowed, commercial revenue decreased 4 percent to \$142.9 million during the latest quarter compared to the same period in 2015. Gilmore expects 2016 to be another solid year for the company’s commercial business.

The provision for policy losses and other claims was \$50.5 million in the first quarter, or 5.5 percent of title

premiums and escrow fees, compared with a 6.6 percent loss provision rate in the first quarter of 2015.

Personnel costs were \$355.1 million in the first quarter, an increase of \$15.8 million, or 5 percent, compared with the same quarter of 2015.

During First American's earnings call, Gilmore praised First American's preparation and the title operation's successful response to implementation of TRID.

"During the quarter, we continued to refine our processes and believe the new settlement practices have become a normal part of our direct title operations," he said. "We do not expect any material impact on our financial results going forward."

Old Republic

Old Republic International Corp. reported that its title insurance group posted pre-tax income of \$21.4 million during the first quarter of 2016. This compares to \$15.9 million during the same period a year ago.

The company reported claim costs of \$24.3 million during the latest quarter, which decreased slightly from \$23.8 million during the first quarter of 2015. The claims ratio was 5.1 percent during Q1 2016, down from 5.6 percent during Q1 2015.

During the earnings call, Rande Yeager, CEO of Old Republic National Title Insurance Co., said he was satisfied with company results following implementation of TRID.

"The continuation of a favorable mortgage rate environment and improving housing and commercial property markets led to higher revenues from title premiums and fees in this year's first quarter," Old Republic reported in its earnings release. "The improvement was achieved in spite of the adverse

Industry Data

ALTA compiles industry market share data by underwriter and state. Go to www.alta.org/industry/financial.cfm.

effect that recently implemented mortgage disclosure rules are having on the consummation of real estate transactions."

Stewart

Stewart Information Services reported that its title segment posted a pre-tax loss of \$1 million. This compared to a pre-tax loss of \$11.4 million during the same period a year ago.

"Our title segment continues to show year-over-year improvement in pre-tax margin, generating positive operating earnings, despite the first quarter traditionally being the weakest residential resale volume quarter of the year and, in addition, facing headwinds stemming from declining refinance volume and continued industry inefficiencies related to the new integrated disclosure requirements," said Matthew Morris, Stewart's chief executive officer. "We believe the negative impact of the integrated disclosure rules introduced last October moderated during the quarter, and we don't expect this to materially influence operations going forward."

Effective during the first quarter of 2016, Stewart included results of its centralized title services business—which were previously reported in the mortgage services segment—and decentralized refinances in the results of its title sector.

"Both changes obviously had an impact on the margin of the title segment," Morris said.

Employee costs for the first quarter of 2016 decreased \$12.3 million, or 7.6 percent, from first-quarter 2015. As a percentage of title revenues, title losses were 5.6 percent in the first quarter of 2016. This compared to 8.2 percent in the first quarter of 2015.

During the first quarter of 2016, Stewart's direct operations opened 107,326 orders and closed 74,643 orders. This compared to 135,866 direct orders opened during the same period in 2015 and closing 85,740 direct orders.

Investors Title

North Carolina-based Investors Title Co. reported net income of \$1.8 million during the first quarter of 2016. This compared to \$1.7 million in net income during the same period a year ago.

The company reported that revenues for the quarter totaled \$24.9 million, a decrease of 12.2 percent versus the prior year period, reflecting lower levels of premiums written. Although revenues for most issuing offices increased from last year, they were offset by reductions in a few larger agencies, resulting in an unfavorable total revenue comparison. Transaction volume was down slightly from the prior year period, but with a mix more heavily weighted toward higher-margin purchase business.

"While volume reductions from a handful of agencies resulted in an unfavorable comparison to the prior year, revenues for most of our issuing offices increased," said J. Allen Fine, chairman of Investors Title. A higher mix of direct business, favorable loss development, and stable overhead expenses resulted in positive net income growth versus the prior year."

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Black Knight Acquires eLynx

In May, Black Knight Financial Services Inc., a provider of technology, data and analytics, acquired eLynx, a portfolio company of American Capital.

eLynx solutions help automate paper-intensive processes, improve workflow, reduce costs and support compliance with industry regulations. Black Knight supports many of the nation's largest mortgage lenders and servicers with an integrated solution suite. With the addition of eLynx's capabilities to Black Knight's current offerings, Black Knight will now offer lender clients:

- A flexible document delivery platform, which securely facilitates interchange between consumers, lenders, title providers and other transaction participants either electronically or via proprietary, integrated print and mail capabilities;
- A private-labeled, mobile-friendly consumer portal to support process transparency; collect

and deliver documents throughout the loan lifecycle; and schedule inspections and closings;

- Connectivity to an industry-leading network of settlement agents; and
- Support for data-validated electronic mortgage, including electronic document delivery (e-delivery), e-signature, e-closing and e-recording as well as electronic registration and submission of the mortgage note to an electronic vault.

"This is an exciting step for Black Knight as we announce our first acquisition as a publicly traded company," said Black Knight Executive Chairman Bill Foley. "Over the last two-and-a-half years, we have successfully implemented our business plan to restructure the company and develop a strong cross-selling organization. It is now time to begin executing our acquisition strategy to accelerate our growth profile and fill out our product offerings."

Alabama Legislation Exempts Attorneys from Being Licensed as Title Agents

On May 10, Alabama Gov. Robert Bentley signed a bill that exempts licensed attorneys from being licensed as title insurance agents.

The legislation went into effect immediately. Under previous law, a licensed attorney who serves as a title agent was required to be licensed by the Alabama Department of Insurance.

The legislation requires attorneys to be a member in good standing of the Alabama State Bar. The law prohibits attorneys from charging title premiums that are not in accordance with the filed premium rates that are in effect for the title insurer, and prohibits rebates to insureds. Additionally, the amended legislation confirms that non-attorneys are not violating the unauthorized practice of law statute by engaging in the business of title insurance.

The Dixie Land Title

Association (DLTA) supported a compromise bill that would have addressed continuing education requirements of the insurance department. The bill would have offered reciprocity for continuing legal education earned by lawyers for their requirements with the department of insurance.

DLTA warned that the legislation "goes way too far, by entirely exempting lawyers from the entire (Title Insurance) Act."

"The Title Act has worked extremely well for our industry the last 15 years and provided stability in the market and living wages for title professionals," according to DLTA. "To open the flood gates again to rogue out-of-state competition is the wrong move for our state, especially at a time when we see increasing federal attention on the consumer."

News to Share?

If you have information you'd like us to consider for *TitleNews*, send company announcements to communications@alta.org.

Utah Enacts Legislation Revising Underwriter Liability for Acts of Agents

Legislation signed March 28 by Utah's governor addresses closing and settlement protection, and revises the liability of underwriters for the acts of their agents under certain circumstances.

HB 163, which went into effect May 9, says that an underwriter that appoints an agent is "liable to a buyer, seller, borrower, lender or third party that deposits money with the individual title insurance producer or agency title insurance producer for the receipt and disbursement of money" The legislation states that once a title insurer is named on a title commitment, "only that title insurer is liable"

According to the Utah State Land Title Association, the revisions

were to more narrowly identify the circumstances where the underwriter becomes liable, who they are liable to and the maximum liability.

The new legislation also clarifies the role of closing protection letters (CPL), stating that an underwriter represented by an individual title insurance producer or agency is not liable for the acts of the agent beyond what's agreed to in the CPL. The law also says that any underwriter liability for the acts or omissions of the agent "may not be limited or modified because the title insurer has provided closing protection to one or more parties to a real property transaction, escrow, settlement, or closing."

National Association of Secretaries of State Launches Remote Notarization Task Force

Secretaries of State are joining forces with state notary professionals and private-sector notarization experts to announce the formation of the National Association of Secretaries of State (NASS) Remote Notarization Task Force.

The task force, which includes representation from 19 states, is dedicated to promoting

a greater understanding of the issues and policies surrounding the adoption of remote/video notarizations among states.

NASS President and Louisiana Secretary of State Tom Schedler and Kentucky Secretary of State Alison Lundergan Grimes will co-chair the task force's work.

Berkshire Hathaway Affiliate Opens Title Company in St. Louis Area

Berkshire Hathaway HomeServices' (BHHS) Alliance Real Estate announced it has opened a wholly owned title company, Alliance Title Group, in the St. Louis area.

Owners of the title company are Andrea Lawrence, Kevin Goffstein and Robert Bax. They

also comprise ownership of Alliance Real Estate. Gary Lombardo has been named chief operating officer.

Alliance Title Group is opening with a 10-person full-time team of closers, escrow coordinators and examiners.

CFPB Provides Annotated Versions of LE/CD With Citations to Final Rule

The Consumer Financial Protection Bureau (CFPB) has published annotated versions of the Loan Estimate and Closing Disclosure that provide citations to the disclosure provisions in Chapter 2 of TILA referenced in the Integrated Mortgage Disclosure final rule.

According to the bureau, the annotated forms are intended to provide a starting point for analysis of the relevant regulatory

text. For complete and definitive requirements, the CFPB refers the industry to the rule and its Official Interpretations. The CFPB added that the annotated forms do not represent legal interpretation, guidance or advice of the bureau.

The annotated versions can be accessed on the CFPB website at www.consumerfinance.gov/know-before-you-owe/.

Delaware Exempts Licensed Attorneys from Pre-licensing Education, Examinations

New legislation signed April 20 by Gov. Jack Markell exempts attorneys who are licensed to practice in Delaware from pre-licensing education or examinations when applying for a title insurance producer license.

SB 116, which went into effect immediately, states that an "applicant for a license as a producer for title insurance who is an attorney licensed to practice law in this state shall not be required to complete any pre-licensing education or examination."

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United to Protect

Last month, at ALTA's annual Federal Conference & Lobby Day, more than 250 ALTA members canvassed Capitol Hill meeting members of Congress and staff. In 208 separate meetings, we explained the important role title insurance plays in providing peace of mind to homebuyers by protecting their property rights.

We also discussed the TRID rule, also known as the Know Before You Owe. We told our federal legislators that the CFPB needs to provide public guidance to legitimate questions, and must fix the confusing manner in which title insurance fees are required to be disclosed.

I'm grateful for those who attended and shared your personal stories. Thank you. There's no better way to reach federal legislators than by sharing real-life examples of how decisions on Capitol Hill impact people in their district or state.

In addition to Lobby Day, we had an opportunity to hear from two insightful panels that talked about how businesses are adapting to deliver innovative products and services. I led a panel on how technology is used to influence today's elections, while ALTA Chief Executive Officer Michelle Korsmo moderated a discussion of CEOs from other trade associations that delved into how their industries have evolved to meet ever-increasing regulatory and consumer demands.

Even though real estate is local and how our industry operates can vary from county to county, we all share the common bond of protecting property rights and providing peace of mind. We can never go wrong explaining how our products and services protect consumers.

Besides advocating in our nation's capital, ALTA promotes our interest at the state level as well. For example, the National Association of Insurance Commissioners (NAIC) Cybersecurity Task Force recently proposed a draft Insurance Data Security Model Law which, if enacted, would dramatically increase obligations and legal risks on the land title industry in the event of a data breach. Responding to feedback and pressure from ALTA and state regulators, the NAIC's commissioner agreed to hold an extended in-person discussion to address concerns about the proposed cybersecurity law.

In a letter, ALTA encouraged the NAIC to work with state attorneys general and consider whether states will pass two different data security laws: one for insurance and a separate one for all other businesses. ALTA suggested that the NAIC host an open conversation about data security that facilitates consensus about our shared goals and pain points. Finally, ALTA expressed concern that the proposal does not adequately take scalability into account. ALTA believes that an insurance-specific data security law could conflict with other state and federal data security legislation, making it impossible for title and settlement agents to comply with all their legal and contractual obligations. ALTA looks forward to continuing to work with the NAIC to ensure that consumer data continues to be protected. Safeguarding data and money from hackers is important, but regulations should not punish businesses for being victims of criminals.

You can be sure that we are united on multiple fronts to protect!

— John Hollenbeck NTP, ALTA president



A close-up photograph of a hand resting on a brick wall under construction. The hand is positioned on top of a row of bricks, with the fingers slightly spread. The background shows more of the brick wall and some mortar. The lighting is soft, highlighting the texture of the bricks and the skin of the hand.

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**Note: Annual Convention now starts on a Tuesday and ends on a Friday*

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