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DECEMBER 2017

'This Is a Problem We Can't Fix on Our Own'

ALTA Past President
Details Wire Transfer
Fraud Threats During
Congressional
Testimony



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**DON'T MISS THIS MONTH'S
DIGITAL ISSUE OF**

TITLENews

The digital edition of **TITLENews** includes a recording of the testimony on wire transfer fraud ALTA Past President Dan Mennenoh gave during a Congressional hearing in November.

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TITLENews

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Thank You

ALTA CONSTANTLY THINKS ABOUT new tools and resources our members need to

succeed. Formulating the ALTA Best Practices, launching a human resources library to help you in your hiring process, starting the Title Action Network and creating the Homebuyer Outreach Program are just a few examples of tools we've rolled out the last few years to help our members meet market demands.

In 2017, we unveiled an initiative called Our Values, a plain-language statement of standards highlighting the integrity and professionalism of our industry. These values give us the opportunity to explain not only what we do, but who we are. We are a vital industry that leads, delivers and protects every single day, helping close real estate transactions and protecting property rights.

This is an industry where local knowledge and customs matter. Your perspective on how business happens in your markets is integral to ALTA's success. Every ONE of our members is an important piece of the whole as we unite to innovate and advocate.

It might go without saying that we're thankful for your membership, but it's important that you hear it from us. And it's important we hear from you. We need to hear your needs and concerns. By giving us feedback, you are actually helping your own business. It's like when you true your wheels on a bicycle. It's important to make sure the wheels on a bicycle are perfectly straight and round. This requires equal tension from all the spokes. It's critical to bicycle safety and performance. A wheel out of true may wobble and lead to a crash. Think of ALTA as your spoke wrench, helping your company run better and smoother.

ALTA is your hub to discover innovative ideas and trends to help ensure your businesses is protected and that you have the very best opportunity to succeed during this dynamic business and regulatory environment. We are working to create an Innovation Marketplace where industry participants can discover innovative solutions and collaborate in a competitive and dynamic environment. We're building this platform because you shared what you need. As we develop the marketplace, we hope it helps true your wheels.

Thank you for being an ALTA member. Your membership is an investment in your knowledge, your career and your industry. By being a member, not only do you strengthen the industry's future, you gain access to an array of resources to help your company differentiate itself and compete in the market. As an industry united, we will continue to do lead, deliver and protect.

Thank you.



Michelle L. Korsmo, ALTA's chief executive officer



ALTA Launches New HOP Video Library to Explain Benefits of Title Insurance

ALTA's Homebuyer Outreach Program is designed to help our members better communicate the benefits of their business. It's expected that by 2019 video use will account for 80 percent of all consumer internet traffic. While video creation is sometimes considered an expensive endeavor for businesses, it's not a marketing source our industry can ignore.

Hubspot reports that 90 percent of video users say that video is helpful in the decision process and that when included in email video leads to a more than 200



percent increase in click-through rates.

To help members explain the benefits of title insurance to consumers, real estate agents and mortgage lenders, ALTA has developed a HOP Video Library powered

by AmTrust Title. The library is a new resource for marketing and education efforts.

Members can link directly to the videos or download the files and upload to their own websites. To access the videos, go to alta.org/hop.

Videos topics:

- 5 Reasons You Need Title Insurance
- Title Insurance Is Where the Smart Is
- Protect Your Money From Wire Fraud Schemes
- Don't Let Your Deal Crumble at Closing

ALTA Announces 10 National Title Professional Designations

ALTA announced it has awarded 10 new National Title Professional (NTP) designations. The designees join 84 other industry leaders from around the country who have earned the prestigious professional designation.

The professional designation was received by:

- Linda J. H. Aparo NTP (reQuire, LLC; Virginia Beach, Va.)
- Debra A. Bartlett CLTP, NTP (Corporate Settlement Solutions; Charlevoix, Mich.)
- William Burding Jr., NTP (Orange Coast Title Company; Santa Ana, Calif.)
- Marilyn De Luna CTIP, NTP (Edwards Abstract and Title Co.; Edinburg, Texas)
- Debra Gentry NTP (Pershing Yoakley & Associates; Brentwood, Tenn.)
- Michael Malone KTP, NTP (Fidelity National Title Group; Wichita, Kan.)
- Daryl Olsen ITP, NTP (Alliance Title & Escrow Corp.; Idaho Falls, Idaho)
- Maura A. Snabes CLTP, NTP (Corporate Settlement Solutions;

Charlevoix, Mich.)

- Chris H. St. John KTP, NTP (Lawyers Title of Topeka, Inc.; Topeka, Kan.)
- Elizabeth J. Wysong Berg ITP, NTP (Agents National Title Insurance Company; Indianapolis, Ind.)

"These National Title Professional designees are committed to advancing our profession, expanding their careers and innovating on behalf of our industry," said ALTA Past President Daniel D. Mennenoh ITP, NTP. "We commend each of these leaders on their distinguished service and dedication to the land title insurance industry. I encourage all land title professionals to learn more about the NTP program and apply today."

The NTP designation recognizes land title professionals who demonstrate the knowledge, experience and dedication essential to the safe and efficient transfer of real property. The designation has several elements, including industry and compliance prerequisites and training requirements. To apply for the NTP designation and for more information, visit alta.org/ntp. ■

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ALTA Promotes Homebuyer Outreach Program at NAR Annual Convention

For the second year in a row, ALTA exhibited at the National Association of Realtor's Annual Convention promoting the Homebuyer Outreach Program (HOP) and explaining the important benefits of title insurance to consumers.

In addition to providing resources to help real estate agents explain the closing process and why consumers should purchase title insurance, ALTA also discussed the importance of educating homebuyers and sellers about the dangers of wire fraud.

During NAR's annual convention, the ALTA group met with Elizabeth Mendenhall, NAR's 2018 president. ALTA member Bert Hughes of Boone-Central Title set up the meeting. Hughes and Mendenhall are



Pictured left to right: Linda Grahovec, Bert Hughes, Jeremy Yohe, Lisa Steele, Nancy Hughes and Elizabeth Mendenhall.

both from Missouri.

The event, which was held in Chicago, was attended by 20,000 real estate professionals. ■

ALTA Sets Membership Record for Eighth Consecutive Year

ALTA marked its eighth consecutive year of all-time record membership. With 6,344 member companies, ALTA has surpassed its 2016 membership record by nearly 100 companies.

"The growth of ALTA is directly related to the success of our members and the growing sense of unity throughout the land title insurance industry," said Michelle Korsmo, ALTA's chief executive officer. "ALTA is the premier source of education, networking, advocacy, communications

and professional industry standards. Our members are protectors of property rights and provide peace of mind for millions of homebuyers each year. We pride ourselves on listening to our members and developing products and resources that help them succeed in an evolving marketplace. We are excited to welcome new and returning members into the ALTA family each year and will continue to provide new solutions for the challenges facing our industry in the coming years." ■

Groups Join ALTA Urging Support for TRID Bill

ALTA and nearly two dozen industry trade groups sent a letter urging members of the U.S. House of Representatives to support legislation that would correct the inaccurate disclosure of title insurance premiums on the TILA-RESPA Integrated Disclosures (TRID).

The TRID Improvement Act of 2017 (H.R. 3978), introduced by U.S. Reps. French Hill (R-Ark.) and Ruben Kihuen

(D-Nev.), amends the Real Estate Settlement Procedures Act (RESPA) to require the Consumer Financial Protection Bureau (CFPB) to allow the accurate disclosure of title insurance premiums and discounts to homebuyers. Under the current regulation, the CFPB does not allow title insurance companies to disclose available discounts for lenders title insurance on the government mandated disclosures. ■

ALTA 2017 TIPAC Donors

The Title Industry Political Action Committee (TIPAC) is ALTA's voluntary, non-partisan Political Action Committee (PAC). TIPAC raises money to help elect and re-elect candidates to Congress who understand and support the issues affecting the title industry. TIPAC has received 621,695 from 1,164 donors in 2017. Check out who has supported the industry at www.alta.org/tipac.

CALENDAR

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Nashville, TN

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March 21- 22
Atlanta, GA

ALTA INNOVATION BOOT CAMP

April 17-18
New Orleans, LA

ALTA ADVOCACY SUMMIT

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ALTA INNOVATION BOOT CAMP

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(Left to right: Matthew Morris, Chief Executive Officer ; Patrick Beall, Group President)

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**‘This Is a
Problem We
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**ALTA Past President Details
Wire Transfer Fraud Threats
During Congressional Testimony**

BY JEREMY YOHE

IN THE WAKE OF EQUIFAX'S ANNOUNCEMENT

earlier this year of a major breach involving the data of nearly one-third of the U.S. population, consumers have become increasingly alarmed about the safety of their personal and financial data.

To reiterate the need to work collaboratively, create a prompt notification standard, and foster harmonization among federal and state agencies charged with data security regulation, the House Subcommittee on Financial Institutions and Consumer Credit held a hearing Nov. 1 titled "Data Security: Vulnerabilities and Opportunities for Improvement."

ALTA Past President Daniel D. Mennenoh ITP, NTP testified during the Congressional hearing detailing the growing threat of wire transfer fraud. Mennenoh shared that wire fraud scams have increased 480 percent over the past year, costing consumers \$5.3 billion.

"The average successful bank robber's haul is \$3,816 while the average successful wire fraud loss is \$129,427," Mennenoh said. "This is a much better return for a much less expensive and dangerous crime to commit. This is a problem we can't fix on our own. What is so frustrating is that there is no amount of money we can spend to protect our consumers from being targeted by these criminals."

Others who testified included:

- Kenneth Bentsen Jr., president and CEO, Securities Industry and Financial Markets Association (SIFMA)
- Edmund Mierzwinski, consumer program director, U.S. Public Interest Research Group
- Debra Schwartz, president and CEO, Mission Federal Credit Union, on behalf of the National Association of Federally-Insured Credit Unions (NAFCU)

U.S. Rep. Blaine Luetkemeyer (R-Mo.), chair of the subcommittee, opened the hearing by saying that more than 15 million Americans were victims of cyber fraud or identity theft last year.

"While data security has been a hot topic since the latest breach, Equifax isn't where the problem started and if we don't act, it isn't where the problem will end," Luetkemeyer said. "With each attack more dangerous and more advanced than the last, it is crucial that every aspect of data security is examined. While today's hearing did not focus on a certain bill, I intend to work with my colleagues to produce data security reform legislation in the near future. This has turned into a crisis, and the American people deserve better."

Bentsen said that cybercrime is now a bigger criminal enterprise than the global narcotics trade, and that the financial services industry is a top target facing tens of thousands of attacks each day. While the data breaches of customer information dominates the headlines, Bentsen warned that a major attack on critical financial market infrastructure or one that destroys records and financial data poses a far larger impact on the economy.

"While regulation and supervision of cyber preparedness has an important role in the collective cyber defense effort, the emergence of many regulations from multiple regulators may lead to a suboptimal balance of industry resources devoted to compliance versus security," he said. "But it is important to recognize that no single actor – not the federal government, nor any individual firm—has the resources to protect markets from these threats on their own. It is critical that we establish a robust partnership between industry and government to mitigate cyber threats and their impact. The industry's resiliency will not be fully effective without the government's help, and vice versa."

Schwartz echoed testimony from Mennenoh and Bentsen saying that securing consumers' personal information and financial accounts requires "the entire payments ecosystem to take an active role in addressing emerging threats, and in turn require all



industries to be proactive in protecting consumers' personally identifiable and financial information from the onset. Congress must require this."

Schwartz said NAFCU believes that the best legislative solution so far on the issue of data security is the bipartisan legislation that was introduced in the 114th Congress by Rep. Randy Neugebauer (R-Mo.) and former Rep. John Carney (D-Del.). The Data Security Act of 2015 (H.R. 2205) would have set a national data security standard that recognized those who already have one under the Gramm-Leach-Bliley Act (GLBA).

"Now is the time for Congress to act to create a national standard on data security for those who do not already have one," she added.

Mennenoh reminded the member of Congress that in addition to GLBA, which places strict requirements on title companies and financial institutions to safeguard non-public personal information (NPI), title companies must comply with various state data security and breach notification laws and state insurance department rules like the recent regulation developed by the New York Department of Financial Services.

"Several years ago, ALTA developed a set of voluntary industry best practices for members to use as part of their compliance programs. These best practices include guidelines on data security and stronger accounting procedures," Mennenoh said. "This includes things like using secure systems when transmitting a consumer's personal information and ensuring that third parties abide by the title company's data security standards."

During his testimony, Mierzwinski pointed out that unlike credit card numbers, Social Security Numbers and date of birth don't change and "may even grow more valuable over time, like gold in a bank vault."

"Much worse, they are the keys to 'new account identity theft,'" he added. "

Mierzwinski said Congress has failed to address the digital threats to consumers from data breaches, adding that any data security, breach or privacy legislation should provide individuals with meaningful and enforceable control over the collection, use and sharing of their personal information.

"It is important that policymakers understand that you cannot bifurcate the issues of data security and privacy," Mierzwinski said. "Consumer privacy is threatened when companies can buy or sell our information and we have little choice or control. Consumer privacy is threatened when data collectors do not keep data secure. In the new Big Data world, where firms are racing to vacuum up even more data than ever before, with even less acknowledgment of any privacy interest by consumers, it is important that we re-establish norms that give consumers and citizens greater control over the collection, and use, of their personal information."

KEY TAKEAWAYS FROM HEARING

- ▶ The increasing frequency and sophistication of cyberattacks demands heightened vigilance and enhanced efforts by industry participants to safeguard consumers' financial data.
- ▶ Protecting information and systems from major cyber threats, such as cyber theft, cyber terrorism, cyber warfare, and cyber espionage should be a priority for Congress.

Over the past two years, according to Bentsen, regulators in the U.S. and around the world have proposed or finalized over 30 new cyber rules and regulations applicable to the financial services industry. While regulations can help raise expectations and define strong standards for market participants, the volume of regulations have resulted in requirements which are sometime overlapping, duplicative and conflicting. While the majority of the hearing focused on data breaches, Mennenoh outlined the various policies and procedures the industry has implemented to prevent wire transfer fraud, but said there is no silver bullet to protect customer money.

"As an industry we have improved our digital hygiene and taken an array of steps to combat this fraud," he said. "This includes using secured email communications, verifying instructions with buyers using known phone numbers, and asking banks to match both the recipient's account number and payee information when sending wires. We issue warnings to our customers on websites and at the bottom of every email."

Mennenoh suggested two areas of focus to help thwart the crimes. First, he said all parties involved in the real estate transaction—including real estate agents, banks, policy makers, consumer groups, title insurers, settlement agents and real estate attorneys—need to help educate customers about the dangers and how to protect their data and money.

A second option is that financial institutions should match not only the account number but also the payee's name when there is a wire transfer.

"This simple authentication step can be the single biggest deterrent," Mennenoh said.

To help raise awareness, ALTA has produced a two-minute video that provides tips on how consumers can protect their money and offers advice on what to do if they have been targeted by a scam.

"Our members know the key to keeping these crimes from happening in their community is awareness, and they know they cannot do it alone," Mennenoh said. "This needs to be a coordinated awareness effort across the industry between all players including real estate agents, policy makers, consumer groups, title insurance companies, title and settlement agents, real estate attorneys and customers themselves."

Rep. Dave Trott (R-Mich.), who met Mennenoh at the Michigan Land Title Association's Annual Convention earlier in the year, asked if putting a disclaimer or warning about wire fraud in the purchase agreement would help inform the consumer. He continued saying that there's "really there's no good solution because once the money is gone it's gone, you have a buyer, who's excited to get their home and they may not even understand what a title agency does. Will education make a difference or is it the



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financial institutions that need to be the solution?”

Mennenoh said that it probably will take combination of the two to help limit the wire fraud incidents. “Because title companies enter the transaction toward the end of the process, the parties that have first contact with the consumer can help with the education process,” he said.

Ranking member Rep. Lacy Clay (D-Mo.) asked the panel their thoughts about the six-week period from when Equifax first learned about the breach to when it alerted the public and whether the company provided timely notice.

Mennenoh agreed with the other panelists that consumers need to be notified promptly.

When it comes to issues where consumer funds have been taken, we take immediate action to try and recover the funds,” he said. “With wire transfer fraud, often times if you don’t address it within 24 hours, it’s difficult to get the funds back.”

For the title industry, after six weeks, “the money is gone,” Mennenoh told Clay.

Rep. David Kustoff (R-Tenn.) asked Mennenoh about the types of policies and procedures have implemented to protect consumer funds. Mennenoh said title companies utilize encrypted email and use secure platforms to exchange data with customers. In terms of protecting fund, he explained that escrow trust accounts have many security measures in place, and that many title companies perform three-way reconciliations, use positive pay for checks and follow a two-factor authentication process for wire transfers.

Kustoff followed up by asking about the impact the cost to implement cybersecurity measures has on small companies.

“Cost is an issue,” Mennenoh said. “For my company, we pay our bank tens of thousands of dollars every year in fees to implement these various procedures. So, for small companies this is a problem. But companies that want to do the right thing, they bear that burden.” ■

JEREMY YOHE is ALTA’s vice president of communications. He can be reached at jyohe@alta.org.

NAIC Passes Insurance Data Security Model Law

The National Association of Insurance Commissioners adopted the Insurance Data Security Model Law during a joint meeting of the Executive (EX) Committee and Plenary. The model law, adopted during National Cybersecurity Awareness Month in October, creates rules for insurers, agents and other licensed entities covering data security, investigation and notification of breach. This includes maintaining an information security program based on ongoing risk assessment, overseeing third-party service providers, investigating data breaches and notifying regulators of a cybersecurity event.

“Considering the recent series of data breaches, cybersecurity is more important now than ever,” said Ted Nickel, NAIC president and Wisconsin insurance commissioner. “Regulators have a critical role to play in protecting consumers as the cyber landscape continues to evolve and this model law sets cybersecurity customs for insurers to help safeguard consumers.”

The model law includes requirements for:

- ▶ Implementation of an information security program
- ▶ Objectives of information security program
- Risk assessment
- ▶ Risk management
- ▶ Oversight by Board of Directors
- ▶ Oversight of third-party service providers
- ▶ Program adjustments
- ▶ Incident response plan
- ▶ Annual certification to commission of domiciliary state
- ▶ Investigation of a cybersecurity event
- ▶ Notification of a cybersecurity event

According to the model act, a licensee with fewer than 10 employees, including any independent contractors, is exempt from implementing an information security program.

The model law progressed through the NAIC Innovation and Technology (EX) Task Force and the Cybersecurity (EX) Working Group during the NAIC’s Summer 2017 National Meeting. The working group solicited input from regulators as well as industry and consumer representatives throughout the drafting process.

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Caribbean

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Thankful for every day we are given.



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What You Can Learn From FTC Data Security Actions Against Uber, TaxSlayer

Good Reminders About Duties to Disclose Practices and Safeguard NPI



THE EQUIFAX DATA BREACH EARLIER THIS YEAR THAT EXPOSED AN ESTIMATED 143 MILLION CREDIT RECORDS highlighted the vulnerability of non-public personal information (NPI) with the threat of constant cyber attacks and phishing schemes. Meanwhile, enforcement actions levied over the summer by the Federal Trade Commission (FTC) against Uber and TaxSlayer serve as significant reminders to financial institutions—including title insurance companies and agents—about their duty to disclose data-sharing practices to customers and to safeguard private and sensitive customer information.

On Aug. 15, Uber Technologies agreed to settle FTC charges over deceptive privacy and data security claims that the ride-sharing company “deceived consumers by failing to monitor employee access to consumer personal information and by failing to reasonably secure sensitive consumer data stored in the cloud.”

Less than two weeks later, the FTC announced a consent order with TaxSlayer to settle claims that the online tax preparation services provider violated the Gramm-Leach-Bliley Act (GLBA) Safeguards Rule and Privacy Rule.

The Privacy Rule requires covered companies to provide notices to consumers that explain their privacy policies and practices. The Safeguards Rule mandates that financial institutions protect the security, confidentiality and integrity of customer NPI by implementing and maintaining a comprehensive

written information security program.

The FTC alleged that Uber’s failure to provide reasonable data security allowed a hacker to access personal information about Uber drivers in May 2014. The information included more than 100,000 drivers’ names and license numbers. The complaint alleges that Uber could have taken reasonable, low-cost measures that could have helped the company prevent the breach.

The FTC’s complaint also charges that Uber failed to live up to its promise to monitor driver and rider accounts for unauthorized access by Uber employees. Uber announced it would closely monitor and audit access to personal information in November 2014, after news reports alleged that Uber employees—without job-related reasons—were checking people’s trip records and other private information. The FTC alleges that Uber stopped the monitoring program



months after starting it and then, for almost a year, didn't follow up on warnings about improper access to people's private information.

The FTC's settlement with Uber has important implications for privacy and data security measures that companies could take, and the representations they and their employees make in these areas.

According to the law firm Sidley Austin LLP, the settlement shed greater light on what the FTC means by "reasonable data security" measures that companies should implement, and underscores the importance of maintaining a robust insider threat prevention program.

Data Security Roadmap

Sidley Austin believes the FTC's action against Uber provides a roadmap of certain reasonable security measures that the agency may expect companies to have in place, by specifically alleging Uber failed to:

- restrict access rights by requiring programs and engineers with access to personal information to use distinct access keys (instead of allowing the use of a single key, which provided full administrative access rights and privileges to all data in the cloud)
- restrict access to data based on employees' job functions (i.e., "need to know")
- institute multi-factor authentication for access to the cloud storage
- implement reasonable security training or a written information security plan
- encrypt sensitive personal information stored in a centrally-accessible location (instead of storing the data in the cloud in clear, readable text, including in database backups)

"The FTC paid particular attention to the potential for preventing or mitigating failures by implementing 'relatively low cost measures' to reduce risk and protect consumer personal information stored in databases," the law firm wrote. "The FTC's recommended measures stress the importance of limiting access to data in accordance with employee roles and responsibility, multi-factor authentication and encryption of sensitive data, even when stored at-rest or in back-up tapes."

In the TaxSlayer case, the FTC alleged that between October and December 2015, hackers used a list validation attack to access account information for approximately 8,800 TaxSlayer customers. This resulted in an unknown number of false tax returns being filed. A list validation attack, also known as

credential stuffing, happens when hackers steal login credentials from one site and then—banking on the fact that some consumers use the same password on multiple sites—use them to access accounts on other popular sites.

The FTC alleged that TaxSlayer violated the GLBA Safeguards Rule by failing to: develop a written comprehensive security program (until November 2015), conduct a risk assessment to identify reasonably foreseeable internal and external risks to security, and implement information security safeguards that would help prevent a cyber attack. The FTC further claimed that TaxSlayer failed to implement adequate risk-based authentication measures, such as requiring consumers to choose strong passwords.

The FTC also alleged that TaxSlayer violated the GLBA Privacy Rule by failing to provide its customers with a clear and conspicuous initial privacy notice and deliver the notice in a way that ensured the consumers received it.

Four Tips

In a blog post, Leslie Fair of the FTC provided the following on what the TaxSlayer case means for other companies?

- 1. You or your clients may be covered by GLBA and not even know it.** GLB's definition of "financial institution" is broader than a lot of businesses think. Sure, it covers companies with vaults, tellers and chained ballpoint pens that rarely work. But if you have clients in the tax planning or tax prep business, chances are they're covered by the Gramm-Leach-Bliley Act, too. What steps have you taken to help them comply?
- 2. Deliver your privacy notices.** Reg P requires that you deliver your privacy notice in a way that consumers are reasonably expected to actually receive it. A link to your privacy policy on your home page is insufficient. There's a model notice that identifies the information you're required to provide.
- 3. Use appropriate authentication procedures.** The Safeguards Rule includes concrete guidance about crafting your information security program and the FTC's complaint outlines instances where TaxSlayer's authentication practices allegedly fell short. According to the FTC, the credential stuffing attack on TaxSlayer ended when the company implemented multi-factor authentication—requiring users to type in their usernames and passwords and then to authenticate their device by entering a code the company sent to their email or phone. Have your clients considered the security advantages of multi-factor authentication?
- 4. The Safeguards Rule doesn't build in any laurel-resting time.** Once covered companies have a written information security program in place, the Safeguards Rule includes ongoing obligations. For example, companies must evaluate and adjust their programs in light of changes to their business operations, the results of monitoring or testing and other relevant factors. Your company or your clients may have put safeguards in place back in 2003 when GLBA was the new kid on the block. But what have they done recently to keep their program current?

Agents National Title Purchased by Blackstone Subsidiary

Founder Says Underwriter Will Continue With Agent-only Model

In 2005, David Townsend started Missouri-based Farmer's Title Insurance Co. dedicated to supporting title insurance agents instead of competing against them. Over the years, the company steadily grew behind the agent-only model and expanded into additional states, which led to its name change to Agents National Title Insurance Co. (ANTIC) in 2009. Now licensed to issue title insurance in 18 states, Townsend decided the time was right to sell the company.

Incenter, a subsidiary of the Blackstone Group that provides trading, advisory and fulfillment services for lenders and specialty finance companies, announced it signed an agreement to acquire ANTIC. The transaction is subject to certain regulatory approvals and is expected to close in the first quarter of 2018.

"This was my baby that I founded and started from scratch," Townsend said. "I wanted to make sure we partnered with the right company and shared the same vision as far as quality service and an agent-only model."

With plans to expand nationally over the next 18 months, Townsend sees the potential for smart growth and expanding its commercial network.

"Incenter provides us a broader access to lenders, loan origination systems and different aspects of the loan transaction, but market share is not the be-all, end-all," he said. "I'd rather say it's about profit. We will get the right market share and will continue our growth pattern working with quality agents and not sacrificing compliance for the sake of growth."

ANTIC, through its subsidiaries, also brings a software system that will connect and coordinate all aspects of the real estate transaction, as well as consulting services and fee-based educational offerings for its agents. The company also is a 1031 qualified intermediary.

Townsend will serve as president alongside Brent Scheer as chief financial officer and chief operating officer, plus Pat Carney as chief strategy officer. Cheryl



David Townsend

Cowherd, senior underwriting counsel, Lori Dorman, director of risk management, and key staff will also remain in place at the headquarters in Columbia, Mo., with satellite offices across the United States.

"Since its inception, ANTIC has focused on protecting an integral component of all real estate transactions while simultaneously building our business to drive technological change in an industry often reluctant to embrace it," Townsend said. "Incenter has taken a similar approach and we have found a likeminded partner in the lender services team. As we expand our operations, we will be looking to partner with quality title agents in our new markets and with the lender services team to create a national platform of title agents and settlement service providers."

Incenter, which acquired Boston National Title last year, is headquartered in

Saint Paul, Minn., and provides its lender clients operating in the mortgage and specialty finance markets with access to capital, secondary markets solutions and fulfillment services.

"Our goal within lender services is to provide solutions to the growing list of pain points that originators of all sizes have in any market environment and the addition of Agents National Title Insurance Company solidifies the foundation of our offering," said John Keratsis, senior managing director for lender services at Incenter.

Blackstone provides ANTIC the backing of a company that reported revenue of \$5.1 billion in 2016. This ranks in comparison to 2016 revenue of other underwriters owned by publicly-traded companies, Fidelity National Financial reported \$9.6 billion, Old Republic International reported \$5.9 billion, First American Financial reported \$5.6 billion and Stewart Information Services reported \$2.0 billion.

When Townsend first launched his company, he partnered with a developer to create software that generates electronic policy jackets and closing protection letters. The digitization of the real estate transaction is a trend that he expects to capitalize on under the Blackstone umbrella.

"We will focus on the automation of the real estate transaction from start to finish," Townsend said. "What we now have is the potential to integrate from order and policy to quality control in a continuous digital stream."

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ALTA President Urges Industry to Answer ‘Mandate for More Transparency’

In an era when the consumer is more inquisitive, and knowledgeable, than ever before, 2017-18 ALTA President Steven Day NTP urged ALTA ONE attendees to continue educating lenders, real estate agents and consumers about the work the industry provides to benefit them and the real estate transaction.

“Consumers have more opportunity today to understand what our industry does, or hear the myths about what we don’t do, because of the tools that are now available,” Day told the more than 1,100 attendees. “This new age of information brings with it a mandate for more transparency on the goods and services being provided to our customers.”

To drive home his point, Day asked attendees to think about their own experiences as a consumer. An example he shared is how people purchase vehicles. In the past, consumers would go to various competing dealerships, look at options and consider prices. Potential buyers would drive several cars around town before making a decision to buy.

“Now, before you even set foot on a physical lot, you’re reading online reviews, checking out the safety ratings and looking at color and features options,” Day said. “You can determine the best price for any car while sitting at your computer, or with your phone or tablet.”

Many times, consumers have already decided on a car before they even drive it. “This is now the expectation of the consumer,” Day said.

The same thing is true for the title industry. Just like cars or food, consumers turn to sources that the title industry hasn’t focused on extensively. Podcasts, blogs and Yelp reviews are all resources today’s consumers turn to in order to get information about a company or product.

“My millennial children use Yelp before they go anywhere,” Day said. “Ask the staff in your office how



often they use these peer-review sites. Better yet, ask your customers. We don’t have a choice in this process. We must be supportive in meeting these requests for information.

“As technology increases and improves, combined with an info-hungry consumer, it’s crucial to better define our industry in the eyes of our regulators and lawmakers, who still struggle to understand our focus on loss avoidance, providing professional and ethical services and producing a quality product for the most important purchase by a consumer in their lifetime.”

The War for Talent—You Ain't Seen Nothing Yet

FOR INDUSTRIES LOOKING TO REPLACE AN AGING WORKFORCE, TWO STATISTICS CAN BE QUITE SOBERING:

1. Six million jobs remain unfilled today
2. The unemployment rate is 4.3 percent

With almost no growth expected in the working-age population over the next 15 years, replacing talent will remain a major obstacle for an industry that remains under the radar of most school-aged people.

“This is about the life and death of your company,” Johnny C. Taylor Jr., the incoming president and CEO of the Society for Human Resource Management told ALTA ONE attendees in Miami.

In addition to a dwindling labor force, only a third of those employed are engaged in their work.

“Something is wrong with that,” Taylor said. “What happened to the value system when employees paid for a day’s worth of work and employees gave them eight hours of work?”

Acknowledging millennials as the workers of the future, employers must figure out how to manage this population to grow their business.

There are things companies can do now to avoid this employment conundrum.

Define Your Culture

The first task, according to Taylor, is to define your culture, and live it.

“It’s about who and what your organization really is,” he said.

Taylor encouraged attendees to have their employees anonymously describe in 10 words what it’s like to work at their organization. Next, Taylor said to ask yourself what your company values and what it doesn’t. Finally, companies must understand why they exist.

Recruit Right

Taylor said one wrong person can destroy a company’s culture. It’s more important to hire for fit. Ask yourself if the candidate will like working at your organization and whether your staff will like working with them. Taylor also said to give strong consideration to those who exhibit “smarts” and a strong work ethic.



“I’m not talking degrees. I know a lot of educated fools,” Taylor said. “I want to know if this person can solve problems and if they are creative and innovative. I want to know what this person thinks about other than the job.”

Identify and Develop Stars

An important item to note here is that “all of us are not created equal in the workforce,” according to Taylor. “We differentiate just like sports teams,” he added. “Star players get paid this, while bench players get paid this.”

The basic premise is that everyone at work does not have to be treated equally. Companies, however, must be able to defend why someone is paid differently. If it’s a rational business reason “then you’re fine,” Taylor said.

Companies may want to consider individualized compensation plans for their star employees. Things to consider outside the typical compensation plans might include a membership at a golf club and spa packages.

“This is the hottest idea right now,” Taylor said. Once a month, his company gives an employee a day at the spa. “She values that. Adding another \$5,000 into her base pay doesn’t mean as much as a day at the spa,” Taylor explained.

To develop customized development plans, managers must let employees talk about their ultimate goals. After honest conversations, then you can create a plan.

“This is what you need to do in this

whole new world of war for talent,” Taylor said. “You need to build a world for your stars.”

Take Good Care of the Rest

While cultivating and maintaining stars is important, it’s also vital to make sure the rest of the staff is being compensated fairly.

“People will start to resent you because you pay them what you can get away with and not what they are worth,” Taylor said. “Figure out what matters most to your employees and give them benefits that matter to them.”

Again, having honest dialogues twice a year will help achieve this goal. Taylor writes a “Dear John” letter every six months for his employees. He explains what the employee did well and what they didn’t do well.

“People want real feedback,” Taylor said.

Manage Your Human Capital

Taylor encourages employers to constantly assess staff satisfaction and engagement.

“And then make sure to act,” he added. “If someone isn’t working out from the beginning, don’t think you can fix them. When someone shows you who they are first, believe them.”

Companies should constantly think of new ways to update the employment experience. One idea Taylor offered was to let people work from home one day a week. This helps employees save money by not having to pay for lunch or parking. He did warn his staff that the “second someone doesn’t answer the phone,” the program would stop.

“We are experiencing a war for talent, and it’s nothing like what we’ll see,” Taylor said as he closed out his presentation. “We have a millennial population and they already start at a different place. You need to identify your stars, develop them and pay them, and clearly define your culture. Not what you want to be, but what you are.”

ALTA ONE Experience

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Demonstrating Value: How to Avoid Running Afoul of RESPA's Anti-Kickback Provisions

By Jon P. Klerowski

Participants in the mortgage and real estate industries often struggle with making practical business decisions while simultaneously avoiding running afoul of Section 8(a) of the Real Estate Settlement Procedures Act's (RESPA) prohibition on referral fees. Section 8(a) violations often involve sensitive valuation determinations associated with marketing and advertising services provided between mortgage industry participants. Part one of this article provides an overview of the legal and compliance climate surrounding RESPA's prohibitions against kickbacks and referral fees, and describes the types of arrangements between industry participants most susceptible to Section 8(a) scrutiny. Part two will provide recommendations on how to support and document fair value determinations to avoid risk of non-compliance.

Section 8(a) of RESPA prohibits referral fees by making it illegal to give or receive any "thing of value" pursuant to an agreement or understanding to refer real estate settlement service business involving a RESPA-covered mortgage loan, as long as no RESPA exception is available. RESPA Section 8(b) also prohibits the splitting of any settlement service charge except as payment for actual services rendered. RESPA Section 8 applies to most residential real estate transactions that involve a "federally related mortgage loan" (e.g., purchase loans, assumptions, refinances, property improvement loans, and equity lines of credit that are secured by a mortgage on one-to-four family dwellings and issued by financial institutions either regulated by, or whose deposits are insured by any agency of the federal government).

Any person who gives or accepts a fee, kickback

or thing of value (payments, commissions, gifts, tangible item or special privileges) for the referral of settlement business is potentially liable for a violation of Section 8(a) of RESPA. A real estate settlement service includes any service for which a consumer will pay fees in connection with the settlement of a residential home purchase (financed by a federally related mortgage loan), such as mortgage origination, title insurance, real estate brokerage and closing services. Further, the other elements of a Section 8(a) violation (e.g., "thing of value" and "referral") are defined and construed very broadly. For example, a "referral" includes any oral or written action directed to a person that has the effect of affirmatively influencing the person to use a particular settlement service provider when the person will pay a fee for the service.



Section 8(c) of RESPA provides certain exceptions to the broad reach of Section 8 liability. In particular, RESPA Section 8(c)(2) provides that “nothing in this section shall be construed as prohibiting...the payment to any person...compensation...for services actually performed.” It is this Section 8(c)(2) upon which the traditional analysis of fees for advertising and promotional services is based, which generally viewed flat fee payments for such services rendered as exempt from Section 8(a) scrutiny if the value of those services was reasonably related to the payments made, without considering the value of any referrals that might occur. Various federal courts of appeal have held that “reasonable payments for goods, facilities or services actually furnished are not prohibited by RESPA.”

The U.S. Department of Housing and Urban Development (HUD) administered RESPA until 2011. In 2010, HUD issued an interpretative rule addressing how and under what circumstances home warranty companies could pay real estate brokers and agents for marketing services. HUD later acknowledged that its analysis in that rule also could apply to payments made by other kinds of settlement service providers. Under the general principle prohibiting payments for referrals, the HUD 2010 rule set out several factors in evaluating the permissibility of marketing payments. Services performed by real estate brokers and agents on behalf of home warranty companies were compensable at fair value if (i) the services were actual, necessary, and distinct from the primary services performed by the broker/agent, (ii) were not nominal, and (iii) were not duplicative of other services for which a charge was being made. Among other things, HUD also emphasized the importance of evaluating whether the payments

were for compensable services only—as opposed to for referral activity—and ensuring that the payment was reasonably related to the value of those services.

In July 2011, the Consumer Financial Protection Bureau (CFPB), which was created as part of the Dodd-Frank Act in the wake of the financial crisis to supervise and enforce compliance with federal consumer financial laws, assumed responsibility for RESPA. The CFPB actively enforces RESPA, in conjunction with state attorneys general and state departments of insurance. In addition, while they do not have formal authority to enforce RESPA, other state agencies such as real estate commissions also review and will seek to redress RESPA violations.

Advertising, Marketing and Related Service Provider Agreements

An area of focus for the CFPB under RESPA Section 8 relates to agreements to pay for marketing and advertising, or so-called marketing services agreements (MSAs). The CFPB adopted HUD’s statements (including HUD’s 2010 rule on home warranty company payments to real estate brokers and agents) but the CFPB has taken the view that an MSA or other arrangement will not fall within the Section 8(c)(2) exception if the fees paid could be viewed as compensation for referrals, even if based upon the fair market value of marketing or advertising services (together, “marketing services”). The CFPB is concerned with MSAs and other arrangements between real estate settlement service providers to pay for goods, services, and facilities (service agreements) in ways that evade the requirements of RESPA. On Oct. 8, 2015, the CFPB issued a compliance bulletin on the

permissibility of MSAs, in which the CFPB stated that MSAs present “legal and regulatory” risk of running afoul of Section 8(a). The CFPB warned the industry to carefully consider the advisability of continuing any MSA arrangements and cautioned that MSAs would continue to receive intense regulatory attention and that “independently established market-rate compensation for marketing services, alone, does not suffice to ensure the legality of an MSA.”

In June 2015, in a RESPA enforcement action against mortgage lender PHH, former CFPB Director Richard Cordray issued a ruling on an appeal from CFPB administrative trial, stating that he regarded the Section 8(c) provisions as mere interpretative tools that can be relevant to evaluating Section 8 claims, and that such tools do not apply where there is evidence that the challenged payments were made for referrals. In other words, if an agreement can be construed as providing for the payment of things of value because referrals will be made, there is a *per se* Section 8(a) violation even if the payments are for the fair value of services, goods or facilities and permitted under Section 8(c)(2). On appeal to the D.C. Circuit Court of Appeals, the director’s decision was overturned by a three-judge panel, which held that Section 8(c) unquestionably exempts “bona fide” payments for goods or services actually provided, notwithstanding any referrals that may occur. The panel held that under Section 8(c)(2) a “bona fide payment means a payment of reasonable market value.” However, in February 2017, the D.C. Circuit granted the CFPB’s petition for *en banc* review, vacating the panel’s decision. In connection with the *en banc* review, the CFPB has continued to maintain Cordray’s view of RESPA Section 8(c)(2). The *PHH* case was argued on May 24, 2017, but a final decision in the case (which potentially could proceed to review by the U.S. Supreme Court) is not expected for several months.

In this regulatory environment, companies are faced with a difficult decision regarding whether to shoulder the legal and compliance risk associated with service agreements. Some companies have announced that the costs and risks of entering into these agreements have far outweighed the benefits, leading to dissolutions of their existing agreements or inaction moving forward. Others, however, take the view that there is room to permissibly receive compensation from another provider for the use of its marketing platforms (e.g., feature another provider’s ads or marketing material on its website, or placing that provider’s signage in its offices), or the receipt of other actual and necessary services, so long as the party being compensated receives no more than the fair market value of the goods or services actually rendered and refrains from extraneous activity that could be viewed as a referral. It is prudent to vet contemplated services with legal counsel who is familiar with the RESPA definition of a “referral.” Referral activity could include, for example: (i) incentivizing sales agents to promote, market, introduce or otherwise refer the advertising party to consumers; (ii) endorsing the party being advertised; (iii) identifying the party being

advertised as a “designated” or “preferred” partner; (iv) placing obligations in the agreement that appear to require exclusivity or an attempt to make referrals; and (v) setting or adjusting the payment level in whole or in part based on the number of actual or anticipated referrals.

The Acquisition or Formation of ABAs and Interests in ABAs

An affiliated business arrangement (ABA) under RESPA is a business arrangement in which a person who has a direct or indirect ownership position in a provider of real estate settlement services directly or indirectly causes a referral of business to that provider and shares in the resulting profits. However, Section 8 of RESPA has a special statutory exemption which permits ABAs to operate if the following conditions are met: (i) disclosure is made to the consumer prior to the referral, (ii) the consumer is not required to accept the referral to the recommended settlement service provider and (iii) the loan originator only receives a return on the ownership interest (not the volume of referrals made) or other such payment permissible under Section 8.

A joint venture is a common form of an ABA. For example, a real estate broker or property builder may partner with a mortgage lender or a title insurer to form a joint venture in which both partners have ownership interest. To ensure compliance with RESPA guidelines, the joint venture should have its own employees perform the core services of the business (i.e. certain core services associated with being a mortgage broker or a title agent). It is also common for one or both of the joint venture partners to provide the venture with “non-core” services (such as legal, accounting, tax and administrative support) for efficiency and cost saving purposes. However, to avoid scrutiny under RESPA Section 8, if a joint venture partner who provides services to the venture may be making or receiving referrals from the venture, the services need to be priced at fair market value.

An ABA under RESPA may also be formed when one party is able to make referrals to or receive referrals from a real estate settlement service provider and buys an ownership interest in that provider. Here, too, the acquisition price for the ownership interest received must be at fair market value to comply with RESPA Section 8. The same is true in an established joint venture where a partner in a position to make referrals to or receive referrals from the joint venture wants to change its ownership position.

Don’t miss part two of this article, which examines the importance of valuations and provides recommendations on how to support and document fair value determinations to avoid risk of non-compliance.



JON P. KLEROWSKI is a partner at Floyd Advisory and is a certified public accountant (CPA), certified fraud examiner (CFE) and accredited in business valuation (ABV) by the American Institute of Certified Public Accountants. Marcus B. Hemenway and Derek J. Miller contributed to this analysis.

Meet Jackye.

Hiker. Mentor. A 33-year Company veteran. Senior Vice President of Old Republic Title Company and Hawaii State Manager.

Family is everything to Jackye. Growing up in a family of seven children taught this California girl that hard work, compassion and teamwork are the keys to happiness and success. They're lessons Jackye shares with her three children, and with her team of escrow officers, who she considers extended family.

Jackye loves the warmth of the land and people in The Aloha State, and sharing her expertise in residential and commercial real estate with her team there. She challenges and inspires them to grow, while providing unwavering service and support... that's doing business the right way.



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New York Releases New Regulations Targeting Title Insurance

New York State Land Title Association Says, Despite Good Intentions, the End Product Does Not Serve Consumers

The New York Department of Financial Services (DFS) adopted two new regulations for the title insurance industry that clarify rules for marketing expenses and address affiliated business arrangements.

One of the final regulations clarifies rules about marketing expenses including meals and entertainment, and ancillary fees that title agents or title insurers may charge the insured at closing. The second regulation requires title insurance companies or agents that generate a portion of their business from affiliates to function separately and independently from any affiliate and be open for business from other sources.

The New York State Land Title Association (NYSLTA) provided input to DFS as it created the new regulations, but said “regrettably, the end product does not serve the people of New York State, despite its good intentions.”

“In fact, we believe these regulations will have major fallout for the title insurance industry, and therefore, consumers, other real estate professionals, and the real estate industry as a whole,” the NYSLTA reported in a release. “We believe the new regulations will force small, local title insurance companies to close, costing jobs and making the market ripe for take-over by multi-state conglomerates, thereby reducing the options available to consumers.”

While the DFS believes the regulations will help “consumers know what they are paying for during the closing process,” the NYSLTA disagrees with the assertion that consumers will benefit. The bulk of all the closing costs incurred—state, county, and local fees and taxes—remain unchanged, NYSLTA said in its release. In Nassau County, for example, a homeowner is required to pay nearly \$900 to record a deed. Without reductions in these local fees and taxes, the DFS cannot provide consumers with substantial savings.

“We understand and appreciate what DFS is trying to accomplish with these regulations, but disagree with the assertion that there



will be any real benefit to consumers,” NYSLTA said. “The title industry is continuing to study the regulations and looks forward to engaging the DFS in future discussions regarding some of the elements of the regulations, including its interpretations.”

Here’s an overview of the final regulations, which supersede emergency regulations DFS issued earlier to address title industry practices:

- Clarify that the New York anti-inducement statute is not limited to situations in which there is a direct quid pro quo for business, and establishes clear guidelines of expenses that are not permitted. The final regulation provides a non-exclusive list of prohibited expenditures as well as a list of permitted expenditures.
 - Require title insurance companies to submit new rate applications to establish rates to be charged in the future that exclude all expenses deemed to be prohibited under this regulation, and thereby reduce the rates charged to consumers.
 - Limit the ancillary fees and expenses that may be charged consumers for residential closings.
 - Require a title insurance agent or corporation that accepts business from an affiliated person to function separately and independently from the affiliate, including being staffed by its own employees.
 - Engage in all or substantially all of the core title services with respect to the affiliated business, and that core title services include the clearance of title exceptions.
 - Clarify that making a good faith effort to obtain, and be open for, title insurance business from all sources and not business only from affiliated persons, includes actively competing in the marketplace.

The regulation addressing marketing rules provides a list of prohibited expenditures, as well as a list of permitted ones. The prohibited expenditures include:

- meals and beverages unless otherwise authorized under the regulation
- entertainment, including tickets to sporting events, concerts, shows or artistic performances
- gifts, including cash, gift cards, gift certificates, or other items with a specific monetary face value
- outings, including vacations, holidays, golf, ski, fishing, and other sport outings, gambling trips, shopping trips, or trips to recreational areas, including country clubs
- parties, including cocktail parties and holiday parties, open houses
- providing assistance with business expenses of another person, including but not limited to rent, employee salaries, advertising, furniture, office supplies, telephones, telecommunications, computers and other electronic devices and business equipment,

or automobiles, or leasing, renting, operating, or maintaining any of such items, for use by other than a title insurance corporation or title insurance agent

- use of premises, unless a fair rental fee is charged that is equal to the market value in the premises’ geographical area
- paying the fees or charges of any professional representing an insured as part of a real estate transaction, such as an attorney, engineer, appraiser or surveyor, or paying rent or all or any part of the salary or other compensation of any employee or officer of any current or prospective customer
- providing or offering to provide non-title services, without a charge that is commensurate with the actual cost thereof

According to the regulation, the following expenses shall be permissible “provided that they are without regard to insured status or conditioned directly or indirectly on the referral of title business, and offered with no expectation of, or obligation imposed upon, to refer, apply for or purchase insurance. In addition, any expenses incurred pursuant to this subsection must be reasonable and customary, and not lavish or excessive”:

- Advertising or marketing in any publication, or media, at market rates
- Advertising and promotional items of a de minimus value that include a permanently affixed logo of a title insurance agent or title insurance corporation
- Promotional or marketing events including complimentary food and beverages that are open to and attended by the general public
- Continuing legal education events including complimentary food and beverages that are open to any member of the legal profession
- Complimentary attendance offered by a title insurance corporation, title insurance agent as a host of a marketing or promotional event, including food and beverages available to all attendees so long as (a) title insurance business is discussed for a substantial portion of the event including a presentation of title insurance products and services, (b) such events are not offered on a regular basis or as a regular occurrence, and (c) at least 25 diverse individuals from different organizations not affiliated with the host attend or were, in good faith, invited to attend in person
- Charitable contributions made by negotiable instrument made payable only to the charitable organization in the name of the title insurance corporation or title insurance agent
- Political contributions

The regulation prohibits title companies from including the prohibited marketing expenses when responding to the state’s data call. Title companies are expected to report expenditures made for meals and beverages, entertainment, gifts, outings, parties, sponsorships, seminars and continuing education, charitable contributions and political contributions as a separate line item in supplemental expense schedules to the expense schedules submitted annually to the department’s statistical agent.

Big Four Underwriters Report Third-quarter Results

Hurricanes, Fires Affect Earnings



Fidelity

Fidelity National Financial reported that its title segment generated pre-tax earnings of \$262 million during the third quarter of 2017. This compared to \$263 million in pre-tax earnings during the same period a year ago.

“The third quarter was another strong performance for our title insurance business,” said William Foley II, Fidelity’s chairman. “The residential purchase and commercial markets continued to drive our performance in the third quarter, as residential open and closed purchase orders increased 4 and 7 percent, respectively.”

During the latest quarter, Fidelity’s direct operations opened 501,000 orders and closed 367,000. This compares to 616,000 direct orders opened and 433,000 orders closed. The title segment paid \$64 million in claims during the third quarter of 2017 versus \$70 million in claims paid during the third quarter of 2016.

“We experienced stability in our direct and agency channels as direct premiums were nearly even with the prior year, and agency premiums increased by just under 1 percent over the third quarter of 2016,” Raymond Quirk, Fidelity’s CEO, said during the company’s earnings call. “On the agent side, \$119 million or nearly 17 percent of our agency premium were generated by agents signed subsequent to January 2015.”

Quirk said the hurricanes in Texas and Florida affected revenue as offices were closed for several business days. He said the company anticipates that most of that revenue will be deferred into future quarters “as we are already seeing a carryover in closings in revenue into October.”

Fidelity completed two technology acquisitions during the third quarter. The most recent was the acquisition of a majority interest in SkySlope, a digital transaction management and closing solutions for real estate professionals. Foley said SkySlope will “broaden FNF’s service offerings to real estate professionals and further advance our strategy of providing a suite of best of breed technology assets and help real estate agents and brokers gain more customers and more efficiently close transactions.”

In addition, Fidelity acquired Real Geeks, a provider of customer relationship management platform and other SaaS-based internet marketing solutions for real estate professionals. Foley said Real Geeks will complement the company’s existing solution to provide technology solutions to a larger universe of real estate customers.

Fidelity plans to provide a digital end-to-end platform that integrates the front end of the transaction when real estate agents post listings to the purchase contract and receipt, to the escrow.

“Our goal is to be seamlessly integrated with our real estate customers with a kind of disrupting platform to our competitors, and we believe we’re very close to doing that,” Foley said. “And we’re going to be fully integrated with our title and escrow operations.”

First American

First American Financial reported that its title insurance and services segment posted pre-tax income of \$181.7 million during the third quarter of 2017. This compares to \$188.7 million in pre-

tax income reported during the same period a year ago.

“In the third quarter, our company continued to deliver strong operating results,” said Dennis J. Gilmore, chief executive officer at First American Financial. “We are seeing sustained growth in our purchase business, with revenues up 10 percent this quarter, and the positive momentum in our commercial business continued, with revenues up 6 percent from last year. The refinance market, while down sharply from last year, is currently stable, and we have adjusted our cost structure to match the lower order volumes. During the quarter, we also saw additional benefit from growth in investment income driven by the increase in short-term interest rates.”

First American’s direct operations opened 278,300 orders during the third quarter of 2017 and closed 214,300. This compares to 364,900 orders opened during Q3 2016 and 268,400 closed orders. The company paid \$50.3 million in claims during the latest quarter. This compares to \$48.2 million in claims paid during the third quarter of 2016.

“As we enter the fourth quarter, we are optimistic given the expected seasonal strength in our commercial business and the continued growth of the purchase market,” Gilmore said. “Our commercial pipeline is strong, our refinance business is right sized and title claims continue to shrink favorably. We believe these conditions will enable the company to deliver strong financial results in 2017 and will position us well going into 2018.”

During the third quarter, First American completed the acquisitions of Nevada Title Company. The company also finalized the buyout of its majority joint venture partner in a title information company. During the company’s earnings call, Mark Seaton, First American’s chief financial officer, said First American will continue focusing on building out its public record databases and will look for acquisitions to augment that strategy.

“Over the long term, we look to continue to try to drive automation in the titling process and drive efficiency in the digital closing,” he said. “We think there is a big market opportunity for us.”

Gilmore said that the recent hurricanes and wildfires resulted in extreme hardships for many, including a number of First American’s employees and customers.

“While our immediate focus was on helping our impacted employees and providing them with the resources they needed, I’m proud of how hard our people worked to get our operations back up and running, allowing us to quickly resume service to our customers,” he said. “We ultimately expect the company’s financial results will not be significantly impacted.”

Old Republic

Old Republic International reported that its title insurance group generated pre-tax income of \$67.3 million during the third quarter of 2017. This is up from \$58.5 million during the same period a year ago.

The company reported that the continuation of a generally positive mortgage rate environment and reasonably strong housing and commercial property markets were major factors in the year-over-year gain in premiums and fees for 2017. Despite the strong numbers, Rande Yeager, chief executive officer of Old Republic Title Insurance Co., said the latest quarter’s results were impacted by the hurricanes in Texas and Florida.

“It’s difficult to put an extent on the number and the effect, but production basically stopped for more than two weeks in Houston with the weather there and more than a week in most of Florida,” he said. “We expect these operations to recover gradually and to get back to full strength in the fourth quarter.”

During the latest quarter, Old Republic’s title group paid \$12.3 in claims. This is down from \$30.5 in claims paid during the third quarter of 2017.

“On the expense side of the ledger, claim costs were lower in the face of declining claims activity since the Great Recession years. Favorable developments of reserves established in prior years further reduced the claim ratio by 2.1 percentage points in this year’s third quarter and first nine months,” the company reported in a release.

Stewart

Stewart Information Services reported that its title segment posted pre-tax income of \$24.6 million during the third quarter of 2017. This is down from \$50.3 million in pre-tax income during the same period a year ago.

Stewart CEO Matthew Morris said third-quarter results were affected by hurricanes Harvey and Irma and retail staff departures, but that the company “has taken swift, aggressive actions to address these disruptions.”

“Our employees worked tirelessly after the hurricanes to quickly restore full operations and mitigate the financial impact,” Morris said. “We successfully recruited strong, new revenue-generating associates, which have offset \$20-\$25 million of the \$70 million in departed annual revenues related to staff departures. And the recent acquisition of Title365 generated new business, which we expect to result in \$40-\$50 million in annual revenue. These combined actions are expected to fully replace the departed revenue by 2018’s selling season, and our ongoing recruiting efforts and targeted acquisitions should further bolster our top line.”

In its earnings release, Stewart reported that its Board of Directors is reviewing strategic options such as business combinations and the sale of the company.

“The Board is committed to exploring the full range of strategic alternatives available to the company,” said Thomas Apel, chairman of Stewart’s board of directors. “Throughout this process, we will continue executing our current plan and providing the comprehensive service and solutions our customers need for real estate transactions.”

PHH Reaches Settlement for Allegedly Directing Business to Affiliates

IN SEPTEMBER, PHH CORP. REACHED A \$17 MILLION SETTLEMENT with a class of

homeowners who alleged they were improperly referred to various affiliates and subsidiaries for title and settlement services in exchange for things of value. On Nov. 25, 2015, the plaintiffs filed a putative class action against PHH Corp. and its affiliates alleging violations of section 8(a) of RESPA. The plaintiffs said they were referred to various affiliates and subsidiaries of PHH for title and settlement services, including Title Resource Group (TRG), West Coast Escrow Company, TRG Services Escrow and Equity Title Co. RESPA prohibits the paying and receiving of kickbacks, referral fees or other things of value in connection with the referral of title insurance and other settlement services.

The lawsuit alleges that 32,221 transactions were involved. According to the lawsuit, PHH had an affiliated business arrangement with Realty, called PHH Home Loans. PHH also had a strategic relationship agreement requiring it to refer all title insurance and settlement services to TRG in exchange for monetary and



nonmonetary referral fees and kickbacks. The agreement also provided a right of first refusal to purchase the mortgage servicing rights for mortgages originated by PHH Home Loans. The lawsuit also alleges that consumers were not notified about the existence of the affiliation.

The action was litigated for more than a year before the parties engaged in settlement discussions starting on Jan.

31, 2017. On May 19, the parties reached an agreement to settle for \$17 million during a conference before Judge Jay C. Gandhi. The plaintiffs have requested the U.S. District Court of the Central District of California preliminarily approve the settlement so members of the proposed class can receive notice about the action, the proposed settlement and their rights.

AtClose Extends Platform With E-closing Capabilities

Visionet Systems Inc. announced the addition of e-closing capabilities to its AtClose title, settlement and appraisal platform. The new e-closing functionality is being included in AtClose as a secure, and fully compliant module, the company said in a release. According to a release, AtClose allows agents to selectively enable e-closing for specific lenders or geographic areas to meet local recording

requirements and individual lender or investor needs. AtClose gives settlement agents complete control over which documents will be pushed for e-signatures, and when they should be made available to the respective individual(s).

PropLogix Offers Title Curative Services

PropLogix, a provider of real estate due diligence, announced that it now offers title curative services. This is another ser-

vice that helps title agents and real estate attorneys protect their clients and keep their closings on track. PropLogix will resolve title issues such as prior mortgages, deeds of trust or liens needing a recorded satisfaction or release.

TitleTap Launches New Customer Loyalty Program

TitleTap, a provider of real estate law and title insurance website marketing tools,

visionet

Your Complete Mortgage Solutions Provider



At Visionet Systems, our products, people and processes create a solution that best fits your world.



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☎ 609 655 5232

Processing Center

183 Industry Drive
Pittsburgh, PA 15275
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✉ sales@visionetsystems.com
🌐 www.visionetsystems.com

launched a new customer loyalty program called “Website For Life” that gives long-time customers a website redesign free of setup fees. TitleTap customers will have the opportunity to upgrade their TitleTap website once every three years with the latest design templates with no extra setup fees and a streamlined migration process.

Aprio Launches Escrow Reconciliation Solution to Protect Against Fraud

Aprio LLP, the new name for HA+W, has launched a professional-grade escrow reconciliation solution that provides real-time monitoring of escrow accounts to protect title agents from their greatest point of fraud vulnerability.

In partnership with RynohLive’s industry-leading escrow account management and fraud detection platform, Aprio’s escrow reconciliation service offers an unparalleled level of data security, real-time transaction monitoring, fraud detection, audit readiness and professional independence.

For title agents, Aprio’s solution eliminates the burden of performing timely escrow reconciliation and enables them to better utilize resources for revenue-generating activities. For underwriters, the risk associated with their agents’ reconciliation and bookkeeping is minimized.

CFPB Revises Small Entity Compliance Guide for TRID

The CFPB recently released an updated version of the TILA-RESPA Integrated Disclosure (TRID) rule Small Entity Com-

pliance Guide.

The revised version incorporates the recent amendments to the rule that became effective Oct. 10, 2017. Compliance with the amendments will be required for applications received on or after Oct. 1, 2018.

The amendments also clarified that the separate escrow cancellation notice and partial payment disclosure requirements under Regulation Z will apply to all covered loans on Oct. 1, 2018, regardless of when the application is received.

PCN Network Launches New Cyber Theft Solution

PCN Network announced a new service offered through its technology-based disbursement solution to securely manage mortgage funds help protect against cyber theft and fraud.

Called SafeValidation, the solution confirms payoff accounts and authenticates payees for outbound wires. Both are incorporated into SES Technology and are included in the Safe Escrow service.

“Two thirds of title agents believe that not enough is being done to control escrow security,” said Pritam Advani, CEO of PCN Network. “And our technology solutions are likely to control escrow fraud better than current processes. Safe Escrow, built on proprietary SES Technology, supports this tighter security through central escrow management, while still providing local execution by agents.”

Joyce Lombardo, owner of Fast Tract Title, added “I frequently hear stories of thefts of escrow funds. I worry that I could be targeted next. Safe Escrow and SafeValidation give me confidence that my funds are secure and are being sent to the right payee.”

Equity National Title Unveils Search Tool for E-closing Options by Zip Code

Equity National Title has unveiled an “e-closing” hub that provides information about the types of digital closings available at a ZIP code level. The new e-Ways website advises users whether the key authorities in each ZIP code accept none, all or some combination of the four existing types of closing: fully digital, hybrid, remote notary or traditional.

Real Estate Data Shield Launches New Version of Information Security Solution

Real Estate Data Shield (REDS) launched an updated version of its compliance and information security solution. REDS 3.0 enhances the previous version by incorporating a new 15-minute module addressing cyber fraud, wire fraud, identity theft, phishing emails, spoof emails, ransomware and social engineering attacks. By teaching staff how to identify and react to such attacks, companies can immediately mitigate emerging cyber security risks. Nearly 50 percent of all data security incidents are the result of employee negligence, REDS reported in a release.

First American Mortgage Solutions Unveils Tool to Accelerate Digital Lending

First American Mortgage Solutions LLC

unveiled its Digital Gateway to help simplify and accelerate mortgage lending. This interactive platform enables lenders and fintechs to achieve digital transformation more quickly by leveraging First American's application programming interfaces (APIs) for data and services.

The initial First American solutions available as standalone services include granular data for identity, occupancy, property, liens and judgments, and ownership. Coming soon is transparency into major milestones in the fulfillment of services, such as status updates on appraisals and title and settlement, followed by compliance and vendor management, the company said in a release.

National Notary Association Service Provides Real-time Updates on Notary Status

The National Notary Association (NNA) developed a service to provide API access to its database of Notary Signing Agents (NSA). The NSA Data Exchange automates vendor management functions by verifying the background screening, training and insurance credentials of notaries public they hire. The API plugs into a company's vendor management system and pulls real-time credential information from SigningAgent.com, the NNA's nationwide database of thousands of Notaries qualified to facilitate loan signings.

Several companies already use the NSA Data Exchange including Title Source, Ventek, The Closing Exchange, Prestige Notaries and NotaryGo. The NNA is an ALTA Elite Provider and offers its members an NSA Data Exchange subscription discount.

Qualia's Privacy Program Recognized as Best Practices Pillar Three Compliant

Qualia received recognition for being compliant with the third pillar of ALTA's Best Practices after completing an independent audit process with A-LIGN, a third-party certified public accounting (CPA) firm and ALTA Elite Provider. This is in addition to completing the SOC 2 Report achieved earlier this year.

The independent validation confirms the effectiveness of Qualia's processes, procedures and controls for maintaining a privacy and information security program that protects non-public personal information (NPI) as recommended by ALTA Best Practices Pillar Three and as required by local, state and federal law.

ePN Adds 29 Jurisdictions to E-Recording Network

eRecording Partners Network (ePN) recently added 29 jurisdictions across the U.S. to their electronic recording network. These counties, parishes and towns are in Connecticut, Florida, Georgia, Indiana, Kansas, Louisiana, Massachusetts, Missouri, Nebraska, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Wisconsin and Wyoming.

Recent Software Integrations

- **RamQuest Inc.** announced that its **Closing Market** digital network is integrated with **DocMagic's SmartCLOSE**, a closing collaboration portal where participants can view and exchange data prior to closing. The SmartCLOSE collaboration portal can support all documents and data, including the full mandate of the Uniform Closing Dataset (UCD) requirement. This integration enables RamQuest users to collaborate on fees with their lenders and also lets them choose when to synchronize the UCD data between SmartClose and their RamQuest title production solution.
- **Stewart** announced that its title and settlement services are now available through **Ellie Mae's Encompass** mortgage management solution. The integration allows lenders to order Stewart's solutions directly through Encompass for improved quality and efficiency in the loan origination process, the companies said in a release.
- **eTitle** announced it has integrated with **Qualia Marketplace** to help expand its title search and commitment data packages to thousands of additional title agencies. eTitle services title professionals in 14 states, performing property searches by document number, owner name, legal description, as well as packages for commitment data. ■



NEWS TO SHARE?

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



Daniel M. Wold

Old Republic Title Promotes Wold to Executive Team

Old Republic National Title Insurance Co. (ORNTIC) announced that Daniel M. Wold has been appointed to executive vice president, joining the title group's executive leadership team. He will continue to carry out his responsibilities as general counsel and corporate secretary.

Wold, who joined Old Republic Title in February 1993, manages the corporate legal department's underwriting, regulatory and transaction groups, providing legal advice on bankruptcy underwriting and regulatory issues—including Real Estate Settlement Procedures Act (RESPA) and the Consumer Financial Protection Bureau (CFPB). He also advises and assists in the handling of a wide range of corporate matters.

Wold, well known for his special brand of Scandinavian humor, is a member of the Minnesota State Bar Association and its Bankruptcy Section. He formerly served as co-editor of the Bankruptcy Bulletin, a publication of the Minnesota State Bar Association Bankruptcy Section.

Wold is active in ALTA and has served on its Board of Governors since October 2015. He's served as chair of ALTA's RESPA Reform Task Force since January 2009 (now called the TRID Task Force), and serves on ALTA's Title Insurance Underwriter's Section Executive Committee and on the Homeowner Outreach Program (HOP) Committee.



Ginny Abiassi

NATIC Adds Regional Underwriting Counsel for Texas, Louisiana

North American Title Insurance Co. (NATIC) has appointed Leslie Johnson as vice president and regional underwriting counsel for Texas and Louisiana. She will assist Texas underwriting counsel Ginny Abiassi in providing legal and underwriting support to NATIC agents throughout those states. Previously, Johnson practiced as an attorney with Winstead PC in Dallas in the firm's commercial litigation practice group.

AmTrust Names National Agency Manager

AmTrust Title Insurance Company named Thomas Klein as senior vice president and national agency manager and manager for Mid-Atlantic agency units. Klein, a title insurance veteran with more than 36 years of title insurance experience, will oversee the unit that services larger title agents operating in multiple states, and will supervise building out the infrastructure to support agents in Virginia, Maryland, North Carolina, South Carolina and Washington, D.C.

FNTG Adds SVP to Focus on Agency Relationships in Northeast

Fidelity National Title Group (FNTG) has added Rick Wilson as senior vice president in the northeast region, with a focus on key agency relationships. Wilson is active with the New Jersey Land Title Insurance Rating Bureau and the New Jersey Land Title Association (NJLTA), having served as a former president.

North American Title Appoints State Agency Manager for Virginia, Western Pennsylvania

North American Title Insurance Co. (NATIC) has added Jared Uthe as state agency manager for Virginia and the Western Pennsylvania region. Uthe will oversee agency operations in those states, while securing and servicing title insurance agents to promote new and increased business activity. Most recently, he was vice president of sales and marketing for RynohLive's Midwest territory.

Sun Title Expands Exec Team

Grand Rapids, Mich.-based Sun Title Agency added three professionals to its executive leadership team this quarter. The staff of nearly 80 west Michigan title professionals was joined by Sara Julius as chief operations officer, Elena M. Kroll as controller and Katherine Mead as human resource manager.



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Year In Review

IF YOU HAVEN'T NOTICED, the housing market—despite challenges—is on track for its best year in a decade. The mortgage market continued its transition from a refinance-dominated market to a purchase-dominated one. A robust real estate market translates to a strong and busy year for us. ALTA and its Board of Governors work to keep you informed about industry changes and to develop tools to help you compete. Here's a short summary of some of the key items from 2017 important to our members:



STEVEN G. DAY NTP
ALTA president

■ **Our Values:** In 2017, ALTA unveiled the Our Values initiative to Our Values initiative to serve as the industry's cultural compass and highlight the universal core ideals ALTA members embrace. You'll read more over the next year about how ALTA members live these values. alta.org/values

■ **ALTA Registry:** To help provide lenders a trusted industry utility to identify transaction partners, ALTA launched the national ALTA Registry, which allows title agents and settlement companies to confirm company name and contact information with their underwriters. Make sure your company is registered. alta.org/registry

■ **Wire Transfer Fraud:** The threat of wire transfer fraud exploded in 2017. ALTA Past President Dan Mennenoh testified before Congress about the danger and shared how the industry works to protect consumer data and money. He said the title industry can't fix the problem on its own. We need a coordinated effort from everyone involved in the real estate transaction. alta.org/wirefraud

■ **Online Notary:** More states started considering legislation that would allow for online notarization and we expect more activity in 2018. ALTA is working with the MBA to develop a model bill that states can consider. ALTA wants to make sure any bills that are passed are safe for customers, transactions remain insurable and is technology neutral. alta.org/onlinenotary

■ **Homebuyer Outreach Program:** Educating homebuyers about the benefits of title insurance remains a priority for ALTA. To help members communicate with consumers, ALTA unveiled six new advertisements exclusively available to members. There are also three new videos. alta.org/homebuyer

■ **TitleNews:** ALTA's monthly magazine turns 100 in 2018. To give it a new look for its centennial birthday, ALTA rolled out a redesign in September. alta.org/titlenews

■ **TRID:** In October, the finalized TRID amendments went into effect. Meanwhile, the ALTA-supported TRID Improvement Act of 2017 passed the U.S. House Financial Services Committee. We expect the full house to vote soon on the bill, which would correct the inaccurate disclosure of title insurance premiums on the TILA-RESPA Integrated Disclosures. alta.org/trid

■ **CFPB:** After months of speculation, Richard Cordray resigned as director of the CFPB. During this leadership transition, ALTA will continue to support CFPB staff to help provide positive and compliant real estate settlement experiences for consumers and lenders.

As you can see, it's been a busy 2017. It was a year of growth and regulatory transition. We faced a number of business challenges and disruption from natural disasters. But we pulled through because that's what this industry does. We lead. We deliver. We protect. Bring on 2018. ■



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WHAT IS THE ALTA REGISTRY?

The national ALTA Registry is a searchable, online database that confirms a title agent's business name and location at the time of an underwriter's confirmation.

WHY GET CONFIRMED?

The national ALTA Registry is a tool for your title company to show your mortgage lender you are part of the solution to provide more clarification and transparency in the real estate transaction.

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