

# TITLE News

NOVEMBER 2020

AMERICAN LAND TITLE ASSOCIATION



U.S. SUPREME COURT  
**Tribal Ruling**  
AND THE IMPACT ON  
**Property Rights**



Decision Creates Many  
Questions for Title  
Professionals



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# iN This Issue

VOLUME 99 | NUMBER 11 | NOVEMBER 2020

## COVER STORY

### **10** U.S. Supreme Court Ruling and the Impact on Property Rights

## FEATURES

### **19** A Year of Good Deeds

Mary O'Donnell Reflects on Her Year as ALTA President

### **19** ALTA Honors Kosin With Honorary Membership

Past President Joins List of 65 Others to Receive Distinguished Honor

### **20** Mr. Wonderful: The New GDP

Shark Tank Star Says Technology Vital But Can't Replace Customer Connection

### **22** Pearls of Wisdom

Wall Street Savant Carla Harris Shares Advice on How to be an Influential Leader

### **24** Recipe for a Better Tomorrow

Chef and Philanthropist José Andrés Dishes on the Value of Giving Back

### **32** CFPB Rescinds MSA Bulletin, Releases RESPA FAQs

Bureau Says This Does Not Mean All Market Service Agreements are Legal

## DEPARTMENTS

- 5** Publisher's Desk
- 6** ALTA News
- 36** Industry Update
- 40** Movers & Shakers
- 41** Closing Comment





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

# TITLENews

The digital edition of **TITLENews** includes a webinar recording that provides analysis on the exceptions found in section 8(c) of RESPA. Listen to this webinar recording to learn about how these exceptions work in real life and their relationship to RESPA's anti-kickback. There's also a discussion on marketing service agreements.

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*TitleNews* is published monthly by the American Land Title Association. United States and Canadian subscription rates are \$100 a year for members and \$300 a year for nonmembers. For subscription information, call 800-787-ALTA.

Send address changes to *TitleNews*, American Land Title Association, 1800 M Street, Suite 300 S, Washington, D.C. 20036-5828.

Anyone is invited to contribute articles, reports and photographs concerning issues of the title industry. The Association, however, reserves the right to edit all material submitted. Editorials and articles are not statements of Association policy and do not necessarily reflect the opinions of the editor or the Association.

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# TITLENews

OFFICIAL PUBLICATION OF THE **AMERICAN LAND TITLE ASSOCIATION**

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## Protection at Core of Title Industry

### HAVING EMPATHY FOR OTHERS IS IMPORTANT ALL THE TIME —not



**JEREMY YOHE**

ALTA vice president of communications

just during a world pandemic. When she was just 5 years old, my daughter reminded me of this concept. We were watching a TV show and I made a joke about one of the characters. She looked at me and said, “Dad, you need to have more empathy.”

To this day, I find it amazing that such a young child picked up on a concept that was mentioned in her kindergarten class. Why is it critical for us all to embrace this approach? Empathy is important because it helps us understand how others are feeling so we can respond appropriately to a situation.

Politics, social injustice and COVID-19 have deepened the divide in our country. With so much disruption in our lives, one way to combat the unknown is to show empathy toward others. During ALTA ONE last month, all three of the keynote speakers said showing empathy or being empathetic is needed now, more than ever.

In the context of supporting charities, philanthropist and world-renown chef José Andrés said that giving can start with the gesture of empathy. This responsiveness can boost our social connectedness in our communities so that we may increase helping behaviors. Helping feed communities is at the heart of what Andrés’ organizations do. He is a lesson of leadership in crisis. “What we’ve been able to do is weaponize empathy. Without empathy, nothing works,” Andrés said.

Kevin O’Leary, known as Mr. Wonderful on Shark Tank, reiterated that point during his talk. From his perspective, companies should always be thinking about what they can do for their communities. It’s the right thing to do, he said. O’Leary added that people must have empathy for the challenges that others are going through.

Closing out the conference, Wall Street investment guru and motivational speaker Carla Harris drove home this point when talking about leadership. Harris said that to sit in the leadership seat in today’s environment, a person must be visible, be transparent and be empathetic. She has said that there are some who have not been directly affected by COVID, but having a heart for those who have is critical. “Now is not the time to say I’m superwoman and that’s not my kryptonite,” Harris said. “Now is the time to say, I know what you’re feeling and I feel it too.” The Morgan Stanley exec says leadership is not just about what you say, it’s also about listening and being prepared to offer help in innovative ways.

Some people are simply more empathetic in nature. Others may need some reminding from time to time. Wherever you fall on the spectrum, finding tangible ways to do good and make things better for others helps make things less unpredictable.

Practicing empathy during COVID-19 not only opens your mind to what others are experiencing, but it also reminds us that we are in this together. Showing more grace and kindness is needed more than ever. At least, that’s what a 5-year-old once taught me.



## ALTA Welcomes 2020-21 Board of Governors and Exec Committees

Here are the 2020-21 ALTA Board of Governors, as well as the Abstracters and Title Insurance Agents Executive Committee and the Title Insurance Underwriters Executive Committee.

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## ALTA Sets Membership Milestone for 11th Consecutive Year

ALTA marked its 11th consecutive year of all-time record membership. With 6,427 member companies, ALTA has already surpassed its 2019 membership record by 14 companies. Over the past 11 years, ALTA's membership has increased by almost 120 percent.

"With a global pandemic, economic recession, natural disasters, riots and protests, 2020 will go down in history as a challenging time—at minimum—for people around the country," said ALTA CEO Diane Tomb. "However, title professionals have shown to be an innovative, forward-thinking, courageous group. I have never been prouder of an industry as a whole. ALTA is honored to hold the trust of thousands of member companies."

"As title professionals across the

country adopted technologies at a breakneck pace to make closings convenient, safe and secure, ALTA worked with industry partners, including Fannie Mae, Freddie Mac and lenders across the nation, to normalize online notarization. We continue to collaborate with groups such as the National Association of Realtors to educate consumers about the threat of wire transfer fraud when purchasing a home or refinancing. When three-quarters of our membership were eligible for the federal Paycheck Protection Program, ALTA stepped up to help them navigate that arduous application process. Although the United States looks toward an uncertain future, one thing that will not change is our members' ability to lead, protect and deliver for their clients. ALTA will be here



to support our members as they continue to protect the property rights for millions of homeowners across the country."

ALTA's active, committed and diverse membership includes title insurance companies, title and settlement agents, abstracters and real estate attorneys. The majority of these members are small business owners who rely on the variety of benefits and services that ALTA provides.

## ALTA Develops Sample Diversity, Equity and Inclusion Statement for Members

ALTA's Talent Committee has developed a sample diversity, equity and inclusion statement that ALTA members can use as the foundation to help develop their own policy.

Members can access the statement from ALTA's Human Resources Library.

The sample policy statement says:

*Our company values a culture of diversity, equity and inclusion. We make employment decisions without regard to race, color, religion, national origin, citizenship, ancestry, age, sex, gender, sexual orientation, sexual preference, gender identity or gender*

*expression, military or veteran status, marital status, disability, or any other characteristic prohibited by state, federal or local law. This policy applies to all terms and conditions of employment, including recruiting, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation, and training. Our company complies with the Americans with Disabilities Act and all other applicable laws. We also provide reasonable accommodations to applicants with disabilities, during the application process and for any employment decisions, to ensure equal opportunities to all.*

## Membership by the Numbers

ALTA is the title insurance and settlement services industry resource for advocacy, education, communications, networking and policy standards. Here's a look at some membership numbers from the past month.

- New Members: 30
- New Associate Members: 4
- New Attorney Members: 7
- Total Members: 6,431
- State With Most New Members: Texas with 12

For a list of the latest new and associate members, as well as real estate attorneys who recently joined, go to [alta.org/new-members](http://alta.org/new-members).

### ALTA 2020 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. So far in 2020, TIPAC received \$337,064 from 479 donors. In addition, \$122,500 from 20 companies has been pledged to the TIPAC Education Fund. Check out who has supported the industry at [alta.org/tipac](http://alta.org/tipac).





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U.S. SUPREME COURT

# Tribal Ruling

AND THE IMPACT ON

# Property Rights



Decision Creates Many  
Questions for Title  
Professionals



**A** DECISION BY THE U.S. SUPREME COURT in July declaring that most of eastern Oklahoma remains Native American reservation land could impact the title insurance industry and property rights.

In a 5-4 decision in *McGirt v. Oklahoma*, the court held that the reservation for the Muscogee (Creek) Nation in eastern Oklahoma was never abolished by Congress. The reservation boundaries are based on treaties between the United States and the Muscogee tribe spanning from 1833 through 1866. Four other tribes that benefit from this decision include the Cherokee, Chickasaw, Choctaw and Seminole Nations.

A political agreement will need to be reached between federal, state and tribal authorities about which government's sovereign rights control which people and parcels in the reservation. The impact of this agreement will be felt in every industry in Oklahoma, including the title industry.

## Case Facts

Jimcy McGirt, a member of the Seminole nation, was convicted of three sexual offenses in Oklahoma state court. His sentence from the state court was life in prison, and then some. McGirt appealed this conviction, claiming he could not be convicted by the state because they lacked jurisdiction due to the federal Major Crimes Act (MCA). The MCA states, "Any Indian who commits against the person or property of another Indian" any major crime, including murder, kidnapping, felony assault, among others, "within the Indian country, shall be subject to the same law and penalties ... within the exclusive jurisdiction of the United States." McGirt's claim, then, was that because he is an Indian and was accused of committing crimes against another Native American in "Indian country," his case could only be tried in a federal court. McGirt's claim left a major question to be answered: were the alleged crimes committed in "Indian country"?

While the holding of the *McGirt v. Oklahoma* case is narrow in scope to address criminal jurisdiction of the Muscogee under the Major Crimes Act (MCA) for the offense committed by McGirt, the additional impact of the case determining that the Creek Reservation was never disestablished raises issues beyond the particular facts



of the case. The Muscogee (Creek) Nation may now assert civil and administrative jurisdiction over land contained within the boundaries of the reservation.

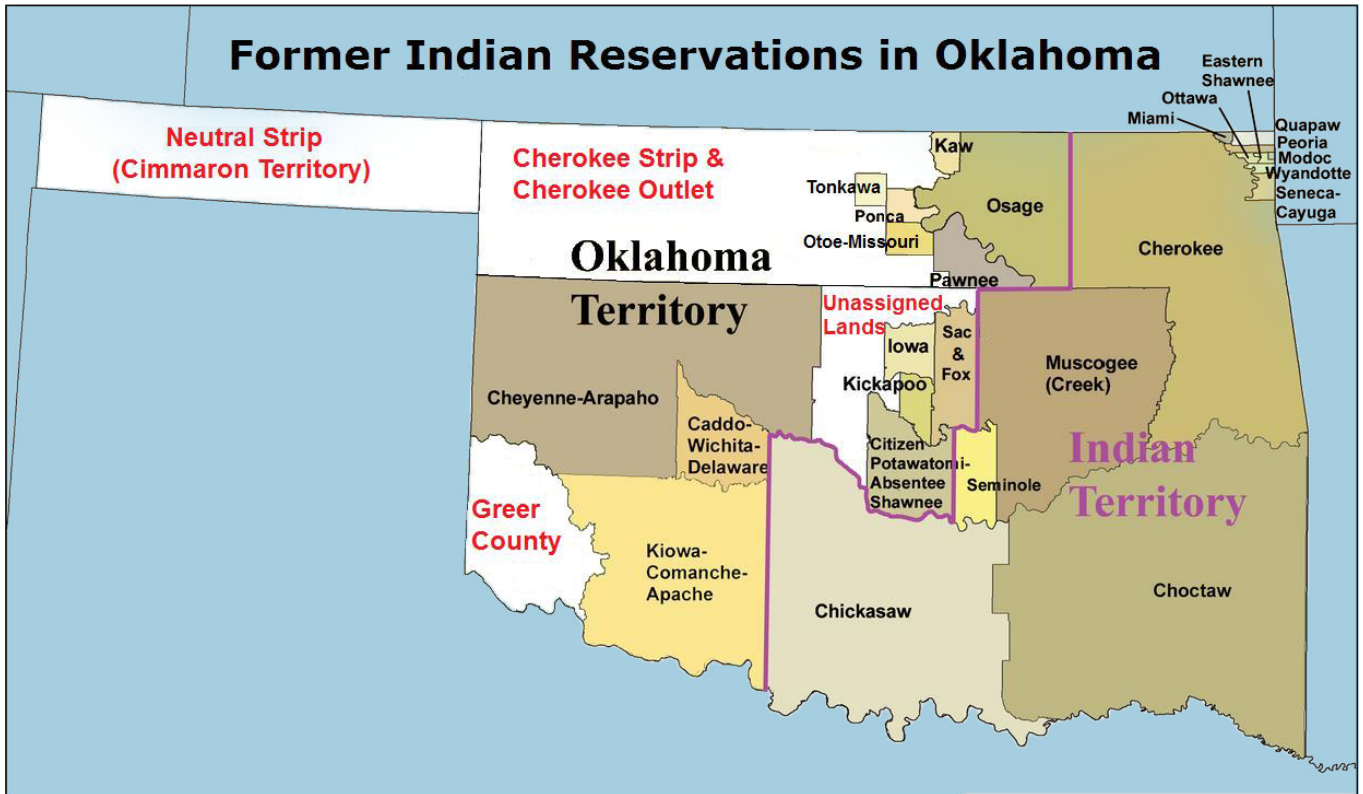
Ultimately, there is one major complicated consequence of this ruling that creates a waterfall of questions to be answered. If a large amount of land in Oklahoma is technically still Native American reservation land, even though many non-tribal members own land within the reservation boundaries, whose laws apply to which actions, people and parcels of land?

"Many in the real estate, abstracting, title insurance, bar association, oil and gas, and commercial and residential lending industries are examining the possibilities of new issues being raised that were not historically raised before the *McGirt* decision about the legal jurisdiction of the Muscogee (Creek) Nation, as well as the other tribes that are similarly situated (Seminole, Choctaw, Chickasaw, Cherokee and Osage)," said Jessie Martin, president of the Oklahoma Land Title Association (OLTA).

OLTA and ALTA are active in these discussions. The government sponsored entities (Fannie Mae and Freddie Mac) also are inquiring about the collateral impact of the decision on residential lending in Oklahoma. Issues being discussed now include taxing authority, land use and

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zoning, access, land records and recordation, subdivision planning, land development, probate, divorce, mortgage foreclosures, mechanic’s liens, bankruptcy and other civil judgment enforcement.

In a letter to U.S. Sen. James Inhofe (R-Okla.), ALTA Senior Vice President of Public Affairs Chris Morton said that many decisions necessary for driving new economic development or transactions hinge on the central question of which government has sovereignty and jurisdiction over the residents, property and businesses located there.

“The decision creates uncertainty for past transactions where all parties were under the belief that parcels of land were not located on a reservation and that transactions were solely under the jurisdiction of the law of the state of Oklahoma,” Morton wrote. “Confirming everyone’s legal expectations when they entered into these transactions over the past century is an absolutely necessary step for effectively protecting people’s property rights.”

### Implications on Property Rights

A tribe is treated for many purposes as a sovereign nation, with unclear limits on the tribe’s authority within those boundaries. This gets complicated as there are several types of land within a reservation. One type is tribal property, which is land owned by the tribe. The second is restricted land, which is land held by the tribe or an individual tribal member subject to restrictions on conveyance or encumbrance without Bureau of Indian Affairs (BIA) approval. This type of land could be held in a trust by

the federal government or it may have restrictions placed on it. Finally, there is unrestricted fee land, which is not subject to BIA restrictions, and may be owned by a non-Native or a Native American. It is likely that most of the land within the Muscogee (Creek) reservation in Oklahoma is unrestricted fee land.

If the land is unrestricted fee land, many questions arise. The first among these are about the laws that may apply and what kind of authority the tribe may have over that property. These questions include, but are by no means limited to, the following:

- Does the tribe have control over zoning?
- Does the tribe make land use decisions?
- Can the tribe assess and collect property taxes?
- Does someone doing business within the reservation boundaries need to have a tribal business license?
- Specific to real estate, if person A is trying to sell their land to person B, does a title insurance company need to ask if one of them is a tribal member? If so, would asking that question violate discrimination laws?

All these questions will impact the title industry in some way. Further, the list of questions continues, and every question will require a political solution in order to arrive at an answer.

“There are additional questions raised about the application of tribal laws on non-tribal members, as well as challenges in identifying an individual’s status as a tribal member, which brings up the delicate subjects of discrimination, privacy laws and the Fair Housing Act,” Martin said. “These questions can be unsettling for industries that rely on stability of legal concepts and legal remedies



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for buying and selling properties, residential and commercial real estate lending within these jurisdictional boundaries and insuring the title risks associated with these transactions.”

While the impact most likely will not extend so far as to make people lose titles to their land, until there are answers to the questions, business as usual will be difficult. As title professionals look to serve their customers and secure their property rights, here are some of the key questions and concerns that the *McGirt* decision raises, and which will require thoughtful and expedient resolution to minimize doubt around real estate transactions:

■ Ownership of real estate

- Which jurisdiction's laws and forms (tribal or state) govern the transfer of a parcel of real estate?
- Was ownership transferred or established in accordance with requirements of the proper governing jurisdiction? If not, what corrective actions will need to take place?
- What about purchases or transfers by legal entities (trusts, partnerships, LLC's, corporations), or using statutory legal processes (powers of attorney, foreclosures, adverse possession, condemnation proceedings, etc.)?

■ Priority of mortgages

- Which jurisdiction's land records govern each parcel for recording purposes?

- What laws or rights do those jurisdictions give for documents recorded in their land records?
- Was a past mortgage recorded in the proper jurisdiction, or are there certain liens or interests that are given special priority?
- Property boundaries
  - Was any division of the land or adjustment of the boundaries approved by and recorded in the proper jurisdiction?
- Dispute resolution
  - Which courts have jurisdiction for bringing disputes and actions such as mortgage and other lien foreclosures? Are past court decisions still valid?
- Mechanics' liens
  - If a contractor or service provider was unpaid by the property owner and had lien rights, where would the correct jurisdiction or venue have been (or still be) to enforce its lien rights? Are the rules the same for tribal members and non-members?
- Taxation
  - Was the property owner taxed by the appropriate authority, or could an owner now be faced with another authority attempting to collect unpaid real estate or personal property taxes?
- Land use regulation
  - Did the property owner or lessee abide by the proper regulation



## McGirt Extends Beyond Oklahoma

The impact of the *McGirt* ruling has extended beyond Oklahoma as two other tribes involved in disputes pertaining to tribal jurisdiction and/or reservation boundaries have asked the court to consider the established precedent.

In December 2018, the Confederated Tribes and Bands of the Yakama Nation filed a lawsuit in U.S. District Court for the Eastern District of Washington seeking an injunction against Klickitat County prohibiting them from arresting and prosecuting tribal members for crimes that occur on a 121,000-acre parcel of land referred to as Tract D. The tribe contends that Tract D is part of their reservation pursuant to their 1855 treaty with the federal government. Klickitat County disagreed, claiming that the Act of Dec. 21, 1904, diminished the reservation and Tract D lies outside the boundaries of the reservation. On Aug. 28, 2019, the District Court issued an order affirming the reservation status of Tract D. The case is currently on appeal with the United States Court of Appeals for the Ninth Circuit. On July 14, 2020, the Confederated Tribes and Bands of the Yakama Nation submitted a letter to the United States Court of Appeals for the Ninth Circuit calling their attention to the *McGirt* decision.

The U.S. Court of Appeals for the Seventh Circuit provided another example by invoking *McGirt* in their July 30, 2020, decision in *Oneida Nation v. Village of Hobart*. In 2016, the Village of Hobart in Wisconsin demanded that the Oneida Nation obtain a permit under a Village ordinance and submit to some of the village's laws before the tribe could hold its Big Apple Fest. The tribe sued for declaratory and injunctive relief claiming that they are not required to submit to state or local law on the reservation. Like the State of Oklahoma in *McGirt*, the Village argued that the reservation was diminished when it went through the allotment process. The district court ruled in favor of the village, but the court of appeals reversed, citing *McGirt*.

in the use of property? This could include the subdivision of land, zoning regulations, building codes, use restrictions, and homeowner associations, including the enforcement of private covenants and restrictions.

- Access via public roads
- Were the public roads and highways now used in Eastern Oklahoma established in accordance with the requirements of the proper governing jurisdiction?
- Will any current landowners lose access to their real property as a result of the *McGirt* decision?

### Native American Lands

According to the BIA, there are 573 federally recognized tribes in the United States. The U.S. federal government is responsible for overseeing and protecting Native American tribes and their assets, and has a fiduciary obligation to Indian tribes defined by federal statutes, regulations and jurisprudence. This federal trust responsibility was established in the 1831 case *Cherokee v. Georgia*, which held that tribes are “domestic dependent nations” who, in exchange for ceding their land, obtained promises from the U.S. for protection.

The federal trust responsibility requires the U.S. to uphold the rights reserved or granted to tribes and individual Native Americans by treaties, statutes and executive orders, including management of tribal trust assets, protection of tribal interests and oversight approval of transactions.

Outgrowths of the federal trust responsibility is that title records to Native American lands are owned by the United States, which means they are subject to the federal Privacy Act. As trustee, the U.S. is not neutral when it comes to Native American land. It has many responsibilities to tribes under federal law, including review of transactions in which Indian-owned land is involved. Obtaining the required federal approval is vital. It's important to know when federal approval is required and insist that it is duly and properly obtained and evidenced on documents.

Determining title to Native American lands, including leases and rights-of-way to or across them, may require review of BIA, state or county, and possibly, tribal records. The BIA's Regional Land Titles and Records Offices (the BIA-LTRO) are that agency's official repositories for documents reflecting title to or encumbrances on Indian lands. (For more information, title professionals should consult the federal regulations found in 25 C.F.R. Part 150.) All title documents regarding transfers or issuance of leases, rights-of-way, or permits on trust or restricted Native American lands “shall be submitted” immediately upon BIA approval to the appropriate BIA-LTRO. The regulations charge LTRO personnel with the responsibility to prepare “land title status reports,” land status maps, and certification of land records and title documents. While state, county or other local land records repositories are not “offices of record” for trust or restricted lands, they may contain instruments that provide notice to junior interest owners and records of divorce or estate proceedings that do not appear in BIA records, and those offices become repositories of record when restrictions are removed from Native American lands.

### What's Next?

*McGirt* will create a domino effect of questions that need to be answered for everyone living within reservation boundaries to understand how their conduct may or may not need to change. These new understandings will impact the way many industries do business, and the title industry is no exception. The title industry will undoubtedly be impacted, but the extent of the impact will be unclear until some political answers are generated to the questions this case has prompted.

“Leaving these issues to courts is not a viable option and will only lead to protracted and expensive litigation and further uncertainty for untold numbers of Oklahoma residents and businesses,” Morton said. “ALTA and OLTA believe the federal government, in coordination with the tribes and state, working alongside stakeholders, must act expeditiously to confirm the legal effect of past transactions conducted under the laws of Oklahoma for property currently within the reservations while these issues are comprehensively considered by Congress for permanent resolution.” ■

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# A Year of Good Deeds

## Mary O'Donnell Reflects on Her Year as ALTA President

**D**uring her induction speech at last year's ALTA ONE, ALTA President Mary O'Donnell referenced a quote from Freddie Mercury's father in the movie "Bohemian Rhapsody," "good thoughts good words and good deeds. It's a reference to one of the core Zoroaster religious maxims, which reinforces the idea of doing the right thing, and worldly rewards will follow.



Little did O'Donnell know how prophetic her words "good deeds" would be as the COVID-19 pandemic changed the course of the entire world—including her ALTA presidency.

O'Donnell mentioned those words because it's how she wanted the industry to approach its business and communities.

"ALTA has been a leader in our industry and we're doing more than ever to empower our members in their local communities as well," O'Donnell said as she introduced the ALTA Good Deeds Foundation. "We're ready to shine a bright light on those efforts."

O'Donnell said the Foundation supports charitable efforts of title professionals as they work to build and strengthen their local communities. It also exemplifies the title industry's values of We Lead, We Deliver, We Protect.

"This is a local grass roots Foundation to institutionalize the incredible work so many of you do already," she added. "Some title agents have indicated they will commit to donating \$1 for every closing in 2021. Others will donate \$200. Others might be thousands. Regardless of your financial ability, your passion and dedication will help launch this foundation to help more people in our hometowns."

O'Donnell also shared how proud she was how the industry responded to the health crisis. She highlighted the various ways title agents continued to keep get deals closed.

She also paid homage to the ALTA staff, who worked to keep members informed during the pandemic. O'Donnell said it reminded her of Winston Churchill's war rooms. These underground war rooms served as the nerve center that allowed Britain's leaders to plot the Allied route to victory during World War II.

"We may not have been at war during the start of COVID-19, but we were all in the business of protecting our members and their business," O'Donnell said. "I am eternally grateful for the way every ALTA team member worked tirelessly irrespective of their actual roles to address every item that was fast changing in the COVID world."

One example of this was how ALTA staff worked to get U.S. Secretary of the Treasury Steven Mnuchin to issue a memo that reinforced the fact that settlement and insurance services were considered "essential."

"One ALTA member arrived at his office and was sitting at his desk when a state trooper came in as someone had obviously alerted them he was breaking the shelter in place order," O'Donnell said. "The ALTA member immediately reached into his desk and brought out the letter from Treasury. Who said dispatches to the front lines aren't important?"

It was moments like that, O'Donnell said, that made her grateful she was president during this trying time—a year that brought the industry closer together than ever before.

"There was no agent agenda or underwriter plan, we all truly worked together," she said.

To conclude her remarks, O'Donnell thanked the ALTA members and conference attendees for a wonderful year of discovery. But would she do it all over again?

"Thank you for a year of good deeds," O'Donnell said. "I certainly wouldn't ask for a do-over. But I'd do it all again in heartbeat."



# ALTA Honors Kosin With Honorary Membership

## Past President Joins List of 65 Others to Receive Distinguished Honor

**ALTA PAST PRESIDENT GREG KOSIN** received an ALTA Honorary Membership during ALTA ONE, held virtually Oct. 6-8.

Kosin, president of Greater Illinois Title Company Group of Companies, joins 65 other title professionals to receive the honor, which is bestowed by ALTA's Board of Governors for performance of distinguished and meritorious service to the association or to the land title industry.

"When I got the call, it was like getting a call from the Hall of Fame," Kosin said. "It was unexpected and emotional. I'm humbled to receive this award and join an elite group of industry professionals I consider mentors and friends."

Kosin acknowledged past ALTA presidents, including Jack Rattikin Jr., Frank Pellegrini, Chris Abbinante, Mark Bilbrey, Anne Anastasi, Rande Yeager, Herschel Beard and Cara Detring.

"All of these are people who I served with on the ALTA Board or on various committees. To me, that's a title industry Hall of Fame line-up," Kosin said. "I'm privileged to be part of this special group. I pledge to continue to work on important issues confronting the title industry."

For most of his 40-plus-year career, Kosin has actively participated in ALTA activities and meetings. He served as ALTA's 2006-07 president and has participated and chaired numerous committees, including the Government Affairs Committee for many years. Kosin was serving as chair of the Abstracters and Title Insurance Agents Section when he was asked to take over as ALTA president after President-elect Mike Wille tragically died in a plane crash shortly before he was scheduled to take office.

A two-time president of the Illinois Land Title Association, Kosin has also served as a director of the Illinois Association of Mortgage Brokers, the Illinois Mortgage Bankers Association, the Society of Mortgage Professionals and the Chicago Association of Realtors.

As a member of the Title Insurance Advisory Task Force of the Illinois Department of Financial Institutions, Kosin helped draft the Illinois Title Insurance Act of 1990. As chairman of the ALTA Government Affairs Committee, he testified at a 2003 hearing of the U.S. House Committee on Small Business on the impact of changes in the Real Estate Settlement Procedures Act (RESPA) on the title insurance industry.

"Greg has given his professional life to our industry and our association," said Jack Rattikin III, president of Rattikin Title and a member of the ALTA Board of Governors "It is my honor to award Greg with this ALTA Honorary Membership award. His talents as a leader in the title insurance industry are well regarded. Throughout his year as president, Greg worked to help reform RESPA and address public confusion about the title industry."





# Mr. Wonderful: The New GDP

## Shark Tank Star Says Technology Vital but Can't Replace Customer Connection



**ENTREPRENEUR KEVIN O'LEARY** is best known as one of the investors featured on the TV series Shark Tank. Mr. Wonderful brought his investment prowess to the virtual ALTA ONE conference and shared how the new GDP—the great digital pivot—will transform the U.S. during a SoftPro-sponsored Omni Session.

Before COVID, according to O'Leary, his typical businesses made 50 percent of sales from retail, 40 percent on Amazon and 10 percent from direct-to-consumer. Then the pandemic hit and that forced an economic shift.

"There's a new America 2.0 emerging and it's digital," said O'Leary, who added that direct-to-consumer sales bring gross margins of nearly 100 percent. "It requires you to understand you've got to communicate directly to your customer."

As an example of the great digital pivot, O'Leary shared how Love Pop Cards, a company in his portfolio that specializes in greeting cards, responded after losing half of its retail sales just days after the country shut down. Shortly before Mother's Day, a designer for the company attempted to purchase flowers for her mother. However, all distribution of flowers had shut down due to the pandemic. While at her CAD station, the employee created a three-dimensional bouquet of flowers. The company then put it on their website. Everyone across the country was having the same problem ordering flowers. As a result, Love Pop Cards sold millions of dollars in digital cards, directly to consumers.

"The digital pivot changed the way businesses communicate with customers," O'Leary said. "It doesn't matter what sector of the market you're in. Change requires supporting customers digitally and being transparent and honest with them."

Due to the digital pivot, O'Leary said his portfolio of investments are already in the process of negotiating new leases with landlords. He expects to reduce square footage by 12 percent, which will result in 3 percent more cash flow. He said the reduction in the retail space will be significant.

"This is happening all over the country," he said. "Investors are starting to sniff out the new America—the digital America. A more efficient America. Sales direct to customers."

When thinking about direct relationships with customers, O'Leary said it's important to think about what a company is doing for their community. He acknowledged the creation of the ALTA Good Deeds Foundation as "the right thing to do."

"It's a wonderful idea," O'Leary said. "People must have empathy for the challenges that others are going through."

Businesses can grow their brand by being involved in their community. As they provide service and give back to those around them, they show others how much they care.

Concluding his remarks, O'Leary reminded attendees that no technology can replace the direct connection to customers. It's what powers business.

"It's people dealing with people. Never forget to stay connected with your customer," he said. "As industries digitize, customer service remains everything."

# THANK YOU



Old Republic Title would like to thank our valued agents for the remarkable resilience they have shown during the COVID-19 pandemic. You embraced unprecedented, ignored impossible and found innovative ways to navigate our new business environment. Thank you for your dedication. We are honored to take this journey with you.

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**Thank you again for your support.**



# Pearls of WISDOM

## Wall Street Savant Carla Harris Shares Advice on How to be an Influential Leader

**D**uring the closing FNF Family of Companies-sponsored Omni Session of the 2020 ALTA ONE, Wall Street and investment guru Carla Harris shared some of her “Pearls of Wisdom” and what it takes to be an effective leader in today’s workforce.

Harris said her “Pearls of Wisdom” advice was developed by grit and formed over time by resiliency. Her unique and powerful pieces of guidance were crafted over 35 years as an African American woman on Wall Street.

Harris shared eight key things she sees as essential for modern leaders, including authenticity, trust, clarity, creating other leaders, diversity, innovation, inclusivity and voice.

“These are hard-learned and earned pearls,” said Harris, who is vice chairman and managing director at Morgan Stanley. “I have learned a few things about not only surviving, but, in fact, thriving, in the seat that you sit in or the seat that you aspire to sit in.”

### **Authenticity**

The first pearl Harris shared was being authentic. She said this is a person’s competitive advantage. If someone speaks and is not authentic, it creates a disadvantage. Success depends on the ability to penetrate relationships. “The easiest way to do that is to bring your authentic self to the table,” Harris said. “Trust is at the heart of any successful relationships. In today’s current environment, Harris said there are three things that are needed in order to sit in the leadership seat: “First, you must be visible. People must see you. Second, you must be transparent about what you know and don’t know. Third, you must also be empathetic. Think about your customers and how this pandemic has affected them.”

### **Trust**

Harris said leaders can’t do it alone. They need the intellect, experience and the relationships of others. Building trust is about delivering repeatedly. “Think about the people in your own life,” Harris said. “Why do you trust these people? Because they have delivered. Whenever I try to penetrate a relationship, I think of four things of value I can provide before I ask for business.”

### **Clarity**

Employees may always not always know what to do to deliver excellence. It’s incumbent on leaders to create and define what success looks like, even when they can’t see it. “Find a discreet period of time and define what you think success looks like,” Harris said.

### **Cultivate Leaders**

Once someone attains a leadership role, Harris says it’s important to cultivate and lift up others. This is essential to continue driving innovation. “This is how you amplify your impact as a leader,” she said. “That’s how you expand your footprint. You may find by giving others the ability to lead, they may also innovate. You may be an outstanding executor, but if you can inspire others that will put you further.”





## Diversity

Harris said companies that lack diverse thinking at the decision-making table will have a gap in their go-to-market strategy. Leaders must avail themselves to all the intellect in the marketplace. “You need a lot of ideas and perspectives, which are born from experiences. So, you need a lot of people in the room. Excellence today looks different. You must model what excellence looks like to millennials and Gen Z. You want to be hyper-focused that you have a diverse organization.”

## Innovation

For companies to consistently innovate, leaders must teach them that it’s OK to fail. “In order to teach them to fail, celebrate the failures,” Harris suggest. “When someone takes a risk, and it doesn’t work out, be careful how you react. You must react constructively, or staff will never reach far enough. Be careful how you message failures.”

## Inclusivity

Harris says showing up as an inclusive leader simply means asking for others’ opinions. Leaders can elicit conversation by showing the team a problem, offer one perspective, and then ask others to add on. “Invite people into the conversation by name,” Harris added. “Who doesn’t value being seen by the boss? Everyone values being heard. This puts everyone’s fingerprints on the blueprint.”

## Voice

In an environment that’s uncertain, employees may feel unsure about what will happen to the company. Employees want the organization’s leader to give a voice to that reality. “If you fail to give voice to that reality, then you impair the trust and authenticity that you’ve built up with your team,” Harris said. “Fear has no play in your success equation.”

“Courage is what holds these strands of pearls together,” Harris concluded. “It takes courage to call a thing a thing. We have all had situations where we know something should have been said in the room, but we simply looked down at our shoes. It takes courage to be an inclusive leader, to engage enough of your people that you can invite them into the conversation, into the solutions, into the results by name. It takes courage to teach people how to fail. It takes courage to be intentional about diversity when we are competing in a dynamic environment. It takes courage to create clarity when you can’t see. It takes courage to create other leaders, especially when you are unsure of your own career trajectory. It takes courage to engage enough with your clients and your teams to build their trust and listen to what they value so you can deliver on that value proposition. It takes courage to bring your authentic self into any environment. If you want to be a powerful influential leader, in today’s environment, you must both expect and strategize to win.”



# Recipe for a Better Tomorrow

## Chef and Philanthropist José Andrés Dishes on the Value of Giving Back

**DURING THE COVID-19 PANDEMIC, MANY OF US LEARNED WHAT “GIVING BACK”** to our communities truly means. Whether we’ve donated time or money or even been on the receiving end of some good deeds, the title industry has come together to lift up our neighborhoods.

To hear about philanthropic efforts on a larger scale, ALTA Immediate Past President Mary O’Donnell had a conversation with chef and humanitarian José Andrés during an ALTA ONE session sponsored by Old Republic.

Known for his groundbreaking avant-garde cuisine and nearly three dozen restaurants worldwide, Andrés is chef/owner ThinkFoodGroup, as well as founder of the World Central Kitchen (WKC), a non-profit that specializes in delivering food relief in the wake of natural and humanitarian disasters.

O’Donnell and Andrés discussed his coming to America, his career, WKC and the importance of meeting the needs of local communities.

Andrés shared a story about his time in the Spanish Navy, when he served first as the admiral’s chef and then on the Juan Sebastián de Elcano, one of Spain’s great tall ships. He called his time on the ship life-changing because he got to see the world. He recalled one night on his ship when it was at port in New York City and he was looking up at the stars in the sky.

“Thinking about the stars on the American flag and the stars in the beautiful sky, you would think anything was possible in America,” he said.

Just a few years later, he got an offer to work at a restaurant in New York.

In 2012, Andrés formed World Central Kitchen. Since serving nearly four million meals to the people of Puerto Rico following the devastation of Hurricane Maria, World Central Kitchen has responded to dozens of disasters worldwide and distributed tens of millions of meals in the process. In response to the COVID-19 pandemic, the organization has partnered with restaurants, small farms and community leaders around the country to combat food insecurity.

O’Donnell asked Andrés what drove him to start World Central Kitchen.

“As you grow older, you gain wisdom, but it also shows you that you know nothing. We’re forever learning,” Andrés said. “The more

I know about my own profession, cooking, but every time I visit a country or open a new book, I learn I know nothing.” Remaining humble, Andrés said he feels like there’s so much more to learn. He said he’s always been interested in trying to feed many.

Andrés said World Central Kitchen was built on the premise that no person should go hungry.

“You may be Republican or Democratic, but everyone will accept that concept that no man, woman or child should go

hungry,” Andrés said. “But this happens in our own backyard.”

When the 2010 earthquake devastated Haiti, Andrés traveled to the area and started cooking in camps. “I started learning what role a cook like me could play following other disasters,” he said.

World Central Kitchen is successful due to the

ability of its teams to get on the frontlines very quickly. Andrés said it’s easy to track hurricanes and get people in place to provide resources, aid and food.

“At the end of the day, we are a very flat organization, and everyone can make decisions quick,” Andrés said. “Our way of making decisions is simple. We feed the hungry and we bring water to the thirsty. These are our marching orders. When you give people clear guidance, usually people are successful”

O’Donnell mentioned the launch of the ALTA Good Deeds Foundation and its goal to amplify the efforts of title professionals supporting their local communities. Andrés offered his advice for those looking to get involved.

“Thank you for all the ALTA members and being agents of change and supporting this initiative,” he said. “You must continue to give to organizations that provide a rate of return. Make sure the organizations you support really benefit people. Whatever you donate to charity, treat that donation the same way you would your for-profit investment. Charity is hard, because your return on investment is that the people in your community do better. Sometimes giving can start with a gesture of empathy. Sometimes this can be huge and can change communities.”



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# 2020 Title Webbie Winners

## Three Member Companies Recognized for Consumer Outreach

**A** LTA announced the winners of the 2020 Title Webbies, an awards program recognizing member companies that have created or redesigned the best title industry consumer-facing website or page within the past year.

The Title Webbie award winners were honored during ALTA ONE, the largest annual event for the land title insurance industry. Nominees in two categories—Best Website-Title Agents and Best Website-Underwriters—were judged on mobile friendliness, overall user experience, social-media integration, image/video use and content quality. New this year, ALTA awarded a third Title Webbie—the #GoodDeeds Award—recognizing a company’s connection to its community through a social media campaign.



ATG Title in Fairfax, Va., won the Best Website-Title Agents category. On its new website, ATG Title focuses on providing information to educate consumers. Six tabs in the homeowner section highlight the purpose and benefits of title insurance, a step-by-step breakdown of the closing process, ways to save on closing costs, resources for more information on buying a home, information on ALTA Best Practices and standards and a real estate glossary.

“The main goal of our website is to educate the consumer on the cumbersome and confusing title and closing process in simple and clear language a fifth grader can understand,” said Mo Choumil, founder and CEO

of ATG Title. “We collaborate writing original content by professional copywriters explaining all the aspects of closing, settlement and escrow services, with the intent to eliminate ambiguity and confusion from the process.”



The FNF Family of Companies, which has offices across the United States, was chosen as the Best Website-Underwriters winner. FNF’s Digital Closing Hub helps educate homeowners who are learning about digital closings and need to understand what to expect during a real estate transaction. The site is easy to navigate, mobile-friendly and a safe space for consumers to learn more about digital real estate closing options.

“The Digital Closing Hub has been an exciting project for the FNF Family of Companies because it has given our agents a way to directly talk to consumers, and the general public, about the changing world of digital closings and remote online notarization,” said Linda Grahovec ITP, IEP, NTP, vice president, National Agency Director of Education and Marketing at FNF Family of Companies. “Always talked about as a topic on the horizon before, the pandemic quickened the remote online notarization (RON) adoption timeline across the country, and FNF is proud to have provided resources and educational materials our agents need to make sure their customers understand these digital options. The Digital Closing Hub is central to these efforts and will continue to be a must-visit website for everyone who wants to learn about the innovation choices they have for a

modern real estate closing.”

The Digital Closing Hub includes information about RON, COVID-19 resources, educational materials, digital closing solution partners and recent digital closing news.

Continental Title, which operates in Kansas and Missouri, received this year’s #GoodDeeds Award for its #CTCcares Campaign. Started in January 2020, the effort has raised more than \$36,000 for local charities, such as several humane societies and Ronald McDonald Houses across the two states.

“We are humbled and honored to be recognized by ALTA for the #GoodDeeds Award,” said Matt McBride, president of Continental Title. “One of the core values is ‘We Are Charitable.’ We truly take this to heart. Through the #CTCcares effort, we have donated \$36,325 through the third quarter of this year to several charitable organizations in the communities we serve.”



“Over the past few years, the title insurance industry slowly has begun to turn the tide and put homeowners at the center of everything we do,” said ALTA CEO Diane Tomb. “With this year’s COVID-19 pandemic, it’s even more important that we take care of our customers and communities, whether that means providing much needed informational resources or financial support. I’m proud to see ALTA members stepping up to the plate with these Good Deeds. Congratulations to ATG Title, the FNF Family of Companies and





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# ALTA Our Values Awards

Members Honored for Exhibiting Traits of Leading, Delivering and Protecting

**ALTA ANNOUNCED THE WINNERS OF THE 2020 ALTA OUR VALUES AWARDS.** The awards program showcases the title insurance industry's Our Values initiative, which serves as the industry's cultural compass and highlights the core ideals ALTA members embrace.

The four Our Values award winners were honored during ALTA ONE, the largest annual event for the land title insurance industry. The three individual awards each represent one of the three values:

- We Lead: We are the authority in real estate transactions. We innovate for the benefit of our customers.
- We Deliver: Our customers trust us to do the right thing, the right way--before, during and after the transaction. We sweat the small stuff to assure that land transfer is accurate, swift and secure.
- We Protect: We protect the property rights of those we serve. We reduce risk so our customers have peace of mind.

The program's fourth award, the Our Values Collaboration Award, recognizes an entire ALTA member office that works as a cohesive team, consistently living Our Values and demonstrating an extraordinary level of positive impact on those who rely on their services.



Nancy McHugh WLTP, president and owner of Town n' Country Title (TNCT), which has multiple offices in Wisconsin and Minnesota, won the We Lead Award for her leadership throughout the COVID-19 pandemic. During March and April 2020, TNCT was going through a large title software upgrade amid the uncertainties created by the pandemic as well as a major increase in business volume. McHugh not only navigated work-from-home accommodations for her entire staff, but also sat with each department to learn their daily activities and help where she could. When she wasn't working late, she was sewing face masks for her team and

members of the community. And when an employee lost a child to COVID-19, McHugh drove four hours to the affected branch and spent two weeks working in the office while the team member took time off. She cried and



prayed with the staff member and supported her in her time of need. McHugh leads by serving her employees, community and customers.

“I am humbled and honored to have received the Our Values We Lead award from the American Land Title Association, and I thank them for this recognition,” McHugh said. “These uniquely challenging times have impacted the way I lead our team. We have experienced the incredible volume increase while training and learning an entirely new production software program, just as COVID-19 changed the way we and the title industry do business. It remains important that as a leader I lend an ear and comfort staff through concerns, illness and, unfortunately, the loss of loved ones. It has not been easy. Ultimately, I serve those that I lead by serving our customers alongside my team, by being a part of the team each day, through it all. Whatever it takes.”



Dee Harrison, president and escrow officer of Alpha Reliable Title Inc. in Orlando, Fla., won the We Deliver Award for closing a transaction at her home during the COVID-19 pandemic. Harrison had a client who needed to close on a property on a specific date not only because the associated rate lock was expiring, but also because the client needed to move her mother before the pandemic became too severe. The client was afraid of exposing her mother to movers and other professionals who might inadvertently put her in contact with the coronavirus. Because the client did not want to meet at an office, Harrison set up the patio at her home for the transaction. The client was blown away that a title agent would open her own home to help keep a stranger safe.

“I am extremely grateful to be the recipient of the “We Deliver” Award,” Harrison said. “Ever since I joined the title industry 30 years ago, it has always been my greatest pleasure to experience the tremendous joy that we bring to our clients by delivering the American Dream. Each file is completely different and comes with its own set of issues that we as title agents have to deal with. My mission is that my team and I will never give up on a closing as long as there is a way to resolve the issues. My experience has taught me that once the clients are willing to hang in there, we should be willing to invest our time to bring that transaction to the closing table. I stand behind my brand, ‘We Stay Open Until You Close’ and live this every day. Closing at odd hours and strange locations, such as while someone catches a plane, being incarcerated or in the hospital, has made us famous among those we serve.”



Maureen Pfaff WTP, NTP, ALTA Board of Governor and president of Olympic Peninsula Title (OPT) in Port Angeles, Wash., won the We Protect Award for saving a transaction from a known fraudster who was a fugitive from another state. Pfaff was alerted to potential fraud when a man unknown to her wanted OPT to record documents related to

a foreclosure because he claimed Fannie Mae had not paid him for work performed. When Pfaff searched county records, she found several suspicious documents. She eventually discovered that the stranger had been convicted of a home theft scam in Montana and confirmed with the recorder's office that he indeed was the same man who had recorded the suspicious documents. She then alerted the local sheriff's office who found the man had warrants out for his arrest. When the man appeared in court for the foreclosure case, the judge dismissed the foreclosure action and the sheriff arrested him on the spot.

"I am honored to receive the Our Values We Protect Award this year," Pfaff said. "Given our specialized knowledge of the real estate transfer process, I believe we have a duty to protect the public record, question filings that don't seem right and alert property owners to questionable activity. We've all heard stories about fraudulent transfers of title, but it's easy to expect that it only happens somewhere else. When I spotted it happening in my community, I was determined to put a stop to it before it turned into a huge financial mess for the property owner."

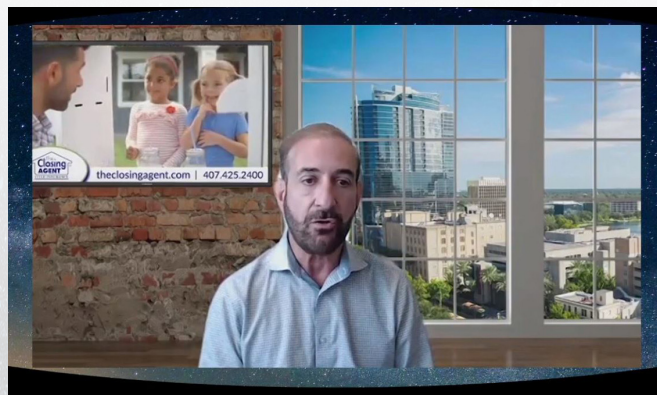
Finally, The Closing Agent team in Orlando, Fla., won the Our Values Collaboration Award for helping not only local real estate partners but also volunteering within the community they serve. During the COVID-19



pandemic, the office pioneered the use of remote online notarization (RON) throughout Florida. President and CEO Barry L. Miller was the first duly appointed remote online notary in the state while Vice President Lyliam Chau was the first woman appointed as a remote online notary. The team has provided multiple classes to real estate agents on the use of RON and the future of

closings. They also hold monthly education courses for Realtors. The Closing Agent Attorney Christian C. Walters volunteers regularly with the Orlando Youth Alliance, an organization dedicated to providing nonexploitative, safe spaces for LGBTQ+ youth. Walters and Miller serve on the board of directors of The Central Florida Gay & Lesbian Law Association, which is dedicated to the professional development of its membership as well as community legal services outreach. Additionally, the two started a free legal clinic at the LGBTQ+ Community Center of Orlando where members of the community can receive free legal advice on a monthly basis. The program has helped hundreds of individuals with legal issues ranging from real property transactions to divorce and immigration. Additionally, Elizabeth Hernandez, a processor with The Closing Agent, volunteers with the American Red Cross. Her services range from assisting families after the tragic burning of their homes to managing full-blown shelters during hurricanes.

"From serving on the City of Orlando's boards to volunteering time helping members of our community that are affected by hurricanes and other natural disasters, I am so happy that the team have been recognized for their tireless efforts," Miller said. "We pride ourselves on keeping it local and look forward to many more years supporting our community."





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# CFPB Rescinds MSA Bulletin, Releases RESPA FAQs

Bureau Says This Does Not Mean All  
Market Service Agreements are Legal



**T**he Consumer Financial Protection Bureau (CFPB) announced it has rescinded the 2015 marketing services agreements (MSA) compliance bulletin, citing lack of regulatory clarity on how to comply with RESPA Section 8.

While it is withdrawing the bulletin, the bureau said it does not mean MSAs are presumptively legal.

“Instead, whether a particular MSA violates RESPA Section 8 will depend on specific facts and circumstances, including how the MSA is structured and implemented,” the CFPB wrote.

“This move highlights that title and settlement professionals need to be on their toes when analyzing marketing services agreements,” said ALTA CEO Diane Tomb. “Section 8 of RESPA can be confusing and lacks clarity. We appreciate the bureau’s effort to produce compliance materials to help the industry work through these issues with specific fact patterns.”

In addition to pulling the bulletin, the bureau issued a set of frequently asked questions (FAQs) to provide an overview of the provisions in RESPA Section 8 (and the respective sections in Regulation X). They address the application of these provisions to gifts and promotional activities and also to MSAs. Here are the four FAQs addressing MSAs and RESPA Section 8:

### **What are marketing services agreements?**

MSAs are agreements that commonly involve an arrangement where one person (or entity) agrees to market or promote the services of another and receives compensation in return. MSAs may involve only settlement service providers or may also involve third parties who are not settlement service providers. For example, an MSA exists when a mortgage loan originator agrees to market or promote the services of a real estate agent in return for compensation.

A lawful MSA is an agreement for the performance of marketing services where the payments under the MSA are reasonably related to the value of services actually performed (12 USC § 2607(c)(2); 12 CFR § 1024.14(g)(1)(iv)). This is distinguished from an MSA that—whether oral, written, or indicated by a course of conduct, and looking to both how the MSA is structured and how it is implemented—involves an agreement for referrals. Unlike referrals, as described in the RESPA Section 8: Marketing Services Agreement FAQ, marketing services are compensable services under RESPA (12 CFR § 1024.14(b) and (g)(2)).

Moreover, when a person performing settlement services receives payment for performing marketing services as part of a real estate transaction, the

marketing services must be actual, necessary, and distinct from the primary services performed by the person. These marketing services cannot be nominal, and the payments cannot be for a duplicative charge or referrals (12 CFR § 1024.14(b), (c), and (g)(3)).

### **What is the distinction between referrals and marketing services for purposes of analyzing MSAs under RESPA Section 8?**

Whether a particular activity is a referral or a marketing service is a fact-specific question for purposes of the analysis under RESPA Section 8(a).

Referrals include any oral or written action directed to a person where the action has the effect of affirmatively influencing the selection of a particular provider of settlement services or business incident thereto by a person paying a charge attributable to the service or business (12 CFR § 1024.14(f)(1)). For example, referrals include a settlement service provider directly handing clients the contact information of another settlement service provider that happens to result in the client using that other settlement service provider.

In contrast, a marketing service is not directed to a person; rather, it is generally targeted at a wide audience. For example, placing advertisements for a settlement service provider in widely circulated media (e.g., a newspaper, a trade publication or a website) is a marketing service.

MSAs that involve payments for referrals are prohibited under RESPA Section 8(a), whereas MSAs that involve payments for marketing services may be permitted under RESPA Section 8(c)(2), based on the facts and circumstances of the structure and implementation. More information on this analysis is discussed below.

### **How do the provisions of RESPA Section 8 apply when analyzing whether an MSA is lawful?**

Entering into, performing services under, and making payments under MSAs are not, by themselves, prohibited acts under RESPA or Regulation X. In fact, MSAs are not referenced in RESPA or Regulation X. Ultimately, the determination of whether an MSA itself or the payments or conduct under an MSA is



lawful depends on whether it violates the prohibitions under RESPA Section 8(a) or RESPA Section 8(b), or is permitted under RESPA Section 8(c). The analysis under RESPA Section 8 depends on the facts and circumstances, including the details of the MSA and how it is both structured and implemented. The following describes how specific provisions of RESPA frame that analysis.

Under RESPA Section 8(a), if an MSA involves an agreement or understanding to refer business incident to or part of a settlement service in exchange for a fee, kickback, or thing of value, then the MSA or conduct under the MSA is prohibited. For example, this can include (but is not limited to) agreements structured or implemented to provide payments based on the number of referrals received. For more information about the analysis under RESPA Section 8(a) FAQ.

Under RESPA Section 8(b), if the MSA serves as a method of splitting charges made or received for real estate settlement services in connection with a federally related mortgage loan, other than for services actually performed, the MSA or the conduct under the MSA is prohibited. MSAs violate RESPA Section 8(b) if they disguise kickbacks by purporting to provide payment for services, but a split charge is paid even though the person receiving the split charge does not actually perform services. Similarly, a violation of RESPA Section 8(b) occurs if the services are performed, but the amount of the split charge exceeds the value of the services performed by the person receiving the split. For more information about the analysis under RESPA Section 8(b), see RESPA Section 8 General FAQ.

However, under RESPA Section 8(c)(2), if the MSA or conduct under the MSA reflects an agreement for the payment for bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, the MSA or the conduct is not prohibited. 12 USC § 2607(c)(2); 12 CFR § 1024.14(g)(1)(iv). RESPA Section 8(c)(2) does not apply to MSAs that involve payments for referrals because they are not agreements for marketing services actually performed. However, RESPA Section 8 does not prohibit payments under MSAs if the purported marketing services are actually provided, and if the payments are reasonably related to the market value of the provided services only. Note that under Regulation X, the value of the referral, i.e., any additional business that might be provided by the referral, cannot be taken into consideration when determining whether the payment has a reasonable relationship to the value of the services provided (12 CFR § 1024.14(g)(2)). See also 12 CFR § 1024.14(b).

## What are some examples of MSAs prohibited by RESPA Section 8?

As stated previously, an MSA can be lawful under RESPA if it is structured and implemented consistently as an agreement for the performance of actual marketing services and where the payments under the MSA are reasonably related to the value of the services performed (12 USC § 2607(c)(2); 12 CFR § 1024.14(g)(1)(iv) and (g)(2)).

However, as discussed in the FAQs above, MSAs can be unlawful when entered into based on their structure or can become unlawful based on how they are implemented. The bureau's Office of Enforcement has identified violations of RESPA Section 8 in investigations that involved the use of oral or written MSAs. An MSA is or can become unlawful if the facts and circumstances show that the MSA as structured, or the parties' implementation of the MSA—in form or substance, and including as a matter of course of conduct—involves, for example:

- An agreement to pay for referrals.
- An agreement to pay for marketing services, but the payment is in excess of the reasonable market value for the services performed.
- An agreement to pay for marketing services, but either as structured or when implemented, the services are not actually performed, the services are nominal, or the payments are duplicative.
- An agreement designed or implemented in a way to disguise the payment for kickbacks or split charges.

For example, assume a lender enters into an MSA with a real estate agent that also makes referrals to the lender. The MSA requires the real estate agent to perform marketing services, including deciding on and coordinating direct mail campaigns and media advertising for the lender. However, the real estate agent either does not actually perform the MSA's identified marketing services or the real estate agent is paid compensation that is in excess of the reasonable market value of those marketing services.

In this scenario, the lender and real estate agent would not meet the standard in RESPA Section 8(c)(2), because the marketing services are not actually provided, or the payments are not reasonably related to the value of the marketing services provided. 12 CFR § 1024.14(g)(1)(iv). Further, if in the example the MSA was structured or implemented as a way for the lender to compensate the real estate agent for client referrals to the lender, the MSA would violate RESPA Section 8(a).



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## Orogen to Obtain Majority Stake of Westcor

The Orogen Group has entered into an agreement to acquire a majority stake in Westcor Land Title Insurance Co. Terms of the agreement were not disclosed. The transaction is subject to customary regulatory approvals.

Since Mary O'Donnell was appointed CEO of Westcor in 2004, the company has grown from a three-state underwriter to the fifth-largest underwriter of title insurance in the United States.

"We are thrilled to partner with Orogen and to execute on our long-term vision for Westcor," O'Donnell said. "We believe that the values and vision we share with Orogen will allow us to continue to expand our business and deliver exceptional service to our customers. I am personally grateful to our team members and customers for their years of dedication."

Westcor grabbed 5.9 percent of title premium volume during the second quarter of 2020, according to ALTA's latest market-share report. This is up from 3.4 percent of market share during the same period a year ago.

New York-based Orogen is a private operating company focused on making significant long-term control and other

strategic investments in financial services companies and related businesses. Orogen delivers extensive resources and strategic and operational expertise to help its partner companies achieve their growth potential.

"Under Mary O'Donnell's leadership, Westcor has grown into the nation's largest independent title insurance business, playing a critical role in facilitating real estate transactions for millions of consumers," said Vikram Pandit, Orogen's chairman and chief executive officer. "Westcor's world-class management team is committed to providing exceptional support and service to independent title agents and other participants in the title insurance process. Most aspects of the financial services landscape are being modernized, and we believe Westcor is at the forefront of bringing new and innovative approaches to the title insurance industry. We see a tremendous opportunity to leverage technology to improve efficiency, make agents' lives easier, and enhance the customer experience. We have been very impressed with Mary and the Westcor team and look forward to partnering with them to drive their next chapter of success."

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## Stewart Acquires Several Western Title Agencies, Operation in Alaska

Stewart Information Services Corporation recently acquired 57 title offices in Arizona, Colorado and Nevada from ET Investments for \$105 million.

Historically, the title offices associated with this transaction have generated in excess of \$20 million in pretax income.

"The purchase of these title operations marks a new day at Stewart in realigning our company to compete in several strategically strong markets where the company has traditionally been underrepresented," said Steve Lessack, Stewart's group president. "We are only at the beginning of meaningful change at Stewart in which targeted investments in markets and people will drive greater brand awareness and customer loyalty."

In addition to the deal with ET Investments, Stewart also obtained Alaska-based Yukon Title Company Inc., which has offices in Fairbanks, Anchorage and Wasilla.

"As an underwriting partner of Yukon Title for many years, we have seen firsthand the solid impact they've had on the Alaska community by providing exceptional title and escrow service during the home buying and selling process," said Wyomia



Clifton, group senior vice president for Stewart Title. "I couldn't be more excited to welcome the talented team at Yukon to the Stewart family and look forward to working with them to further enhance the Stewart brand in Alaska."



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## Shaddock National Holdings Obtains US Title

Shaddock National Holdings recently acquired Utah-based US Title Insurance Agency, which was founded in 1980 and has 14 branches.

US Title will retain its name and current staff. Shaddock National plans to further expand operations of the title company across Utah.

“Our acquisition of US Title is about more than simply acquiring a great company in a dynamic market,” said Mike Rubin, president of Shaddock National Holdings. “From the outset, we have been blown away by the professionalism, commitment, and culture that has been carefully cultivated within US Title. We are grateful and truly humbled to have the opportunity to partner with such an outstanding team of title professionals.”

Shaddock National Holdings also operates Capital Title of Texas, Southwest Title Company and Ascendant Title, which operates on a national platform in 36 states. Earlier this year, Shaddock acquired a major equity interest in Arizona-based Landmark Title Assurance Agency.

Marking 40 years in business, Steve Borget, incoming president of US Title, said the acquisition will bolster the company’s brand and help attract and retain talented employees. Larry Burton, current president of US Title, will retire at the close of this transaction.

“This move allows us to align with a national company while maintaining an independent feel and a commitment to an excellent customer experience,” Borget said. “We look forward to joining the Shaddock Companies family as we continue to grow our market share across the state of Utah.”

## iBuyer Activity Plummetts in the Second Quarter Due to COVID-19

The COVID-19 health pandemic resulted in iBuyers purchasing the fewest homes in more than three years during the second quarter, according to Redfin.

The online brokerage company reported that the nation’s top iBuyers bought 880 homes in the second quarter, or 0.1 percent of homes that sold across the 418 U.S. metros tracked by Redfin, as they slowly reopened after suspending business at the beginning of the coronavirus pandemic. That’s down 88 percent from 7,410 homes, or 0.6 percent market share, a year earlier and represents the smallest number of properties purchased by iBuyers since the first quarter of 2017. In dollar terms, iBuyers spent just \$195 million buying homes, compared with \$1.6 billion a year earlier.

Real estate firms including Redfin, Zillow and Opendoor announced in March that they were pausing iBuying as the coronavirus began to take a toll on the economy. In May and June, with housing demand rebounding, they started to reopen their iBuying programs in select markets. While iBuyer market data isn’t yet available for July and August, Jason Aleem, vice president of RedfinNow, said he has seen a major uptick in demand over the last few months.

“The pandemic has brought a lot of folks into the market who need liquidity, certainty and a safe and contactless way to sell their home,” Aleem said. “We’re working with several move-up buyers who need a bigger house with room to work from home, as well as parents moving closer to their adult children.

“One trend that has ramped up since

the pandemic began is the iBuyer bidding war,” Aleem continued. “Homeowners are seeking out offers from multiple iBuyers so they can feel confident they are getting the best possible price in this blazing hot market without a bunch of foot traffic coming through. As a result, iBuyers are making more competitive offers.”

In the second quarter—before iBuying activity had substantially picked back up—all of the 14 U.S. metro areas where iBuyers purchased at least 20 homes experienced a decline in market share from a year earlier. Phoenix saw the most significant slump, with iBuyers acquiring 0.8 percent of homes that sold there, down 3.3 percentage points from the second quarter of 2019. Raleigh and Las Vegas saw the second and third biggest drops, falling 2.9 and 2.7 percentage points, respectively. They were followed by Fort Worth and Charlotte, Redfin reported.

## CFPB Releases Latest Supervisory Highlights Report

In its latest Supervisory Highlights, the Consumer Financial Protection Bureau (CFPB) reported examination findings in the areas of consumer reporting, debt collection, deposits, fair lending, mortgage servicing and payday lending.

The report includes “supervisory observations” based on findings from CFPB examinations completed between September 2019 and December 2019. In addition, the report presents supervisory program developments and guidance related to COVID-19, the CFPB’s policy regarding abusive acts or practices, responsible business conduct, innovation and the pilot advisory opinion program.

The CFPB said the report does not impose any new or different legal

requirements, and all violations described in the report are based only on those specific facts and circumstances noted during those examinations.

The CFPB reported it received a record number of complaints in March and April, 36,700 and 42,500, respectively. In 2019, the monthly average for complaints was 29,000. The bureau attributes the higher numbers to factors such as market conditions and more public awareness of the complaint system. The bulletin showed that mortgage and credit card complaints top the list for complaints that mention coronavirus terms, with 22 percent and 19 percent of complaints, respectively. Among mortgage complaints that mention coronavirus keywords, 59 percent of consumers identified struggling to pay the mortgage as the issue. For credit card complaints, 19 percent of consumers identified a problem with the purchase shown or statement as the issue.

The report includes an overview of the CFPB's pilot advisory opinion (AO) program, which was launched in June 2020. The AO program allows covered persons or service providers that are subject to the bureau's authority to submit a request for review or comment where uncertainty exists. Under the pilot program procedures, the CFPB then selects topics based on the program's priorities and makes the responses available to the public.

The pilot program focuses on four key priorities:

1. Consumers are provided with timely and understandable information to make responsible decisions.
2. Identify outdated, unnecessary or unduly onerous regulations in order to reduce regulatory burdens.
3. Consistency in enforcement of federal consumer financial law in

order to promote fair competition.

4. Ensuring markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

Questions or comments about the findings and legal analysis reported in Supervisory Highlights can be sent to [CFPB\\_Supervision@cfpb.gov](mailto:CFPB_Supervision@cfpb.gov).

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## Black Knight Purchases DocVerify

Black Knight Inc. has acquired DocVerify in a move to accelerate its goal of digitizing the entire real estate and mortgage transaction.

DocVerify's suite of capabilities includes an e-notary platform supporting both in-person electronic notarization (IPEN) as well as remote online notarization (RON) and developer tools. All solutions are built on DocVerify's proprietary VeriVault Verification Platform. With its acquisition of DocVerify, Black Knight enhances its ability to support the widespread adoption of e-notary and e-vault solutions in the mortgage and real estate industries and beyond. DocVerify's digital document verification capabilities are already integrated with Expedite Close, Black Knight's digital closing platform.

"Black Knight and DocVerify are an exceptional strategic fit, given how our solutions and platforms complement one another," said Black Knight CEO Anthony Jabbour. "Digital documents are becoming the norm for conducting business in virtually all industries. Black Knight and DocVerify share a commitment to helping our clients move closer to a secure paperless environment through the digitization of the document validation process and a highly secure

e-notary solution that our mortgage and real estate clients can leverage to offer a 100 percent digital closing."

Both Black Knight and DocVerify play vital roles in the expansion of e-closings. Electronic and remote notarization serve as the backbone of e-closings. DocVerify solutions integrate with virtually any e-closing system. These capabilities are complemented by Black Knight's Expedite Close platform. The electronic document delivery and fulfillment capabilities of the Expedite Close platform enable lenders to leverage e-sign and e-document delivery and quality control audit capabilities from a single platform that supports a wet-sign, hybrid or full-digital close for all real estate closing participants.

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## Recent Integrations

- **Qualia's** integration with **Agents National Title Insurance Co. (ANTIC)** allows agents working with ANTIC to complete commitment and policy production work in one platform. The integration gives ANTIC's network of title agents direct access to their jackets, CPLs, rates and forms through Qualia.
- **WFG National Title Insurance Company's** direct operations will offer **ZOCCAM** technology to make contactless payment easier for customers. ZOCCAM's patented virtual courier mobile app enables Realtors and consumers to send earnest money by connecting directly to a bank via a secure file transfer protocol.
- **AmTrust Title** announced a new integration with **AccuTitle** to offer TitleFusion, Closers' Choice and Landtech to its agents. The integration includes closing protection letters, policy jackets and title search orders.





Hollinger Chapman

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## FNF Hires Hollinger Chapman to Lead Georgia Agency Operation

Fidelity National Financial (FNF) has hired Rachel Hollinger Chapman to spearhead the launch of National Title Insurance of New York's agency operation in Georgia. Chapman's 22-year career in the title insurance industry began in Albuquerque, N.M., as an account executive for direct operations with First American Title. She later transferred to the agency division in Atlanta. In 2001, Hollinger launched Old Republic Exchange Co.'s Southeastern Regional 1031 exchange facilitation operations, serving as vice president and regional manager. Her combined experience in both title insurance and 1031 exchanges led to her return to First American in 2008 in a dual division capacity as vice president and 1031 Exchange and agency account manager.

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## First American Appoints VP of Data and Analytics

First American Financial Corp. announced the appointment of Jon Wierks as vice president in the company's data and analytics division. In this role, Wierks is responsible for further enhancing existing automated valuation and collateral risk analytics initiatives and products. He will leverage First American's data assets to develop new solutions to help mortgage lenders, portfolio managers and investors reduce risk and increase efficiency through predictive analytics tools.

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## Agents National Title Expands Texas Presence

Agents National Title Insurance Company (ANTIC) announced that Steve Ortega and Diana Reese have joined the company as agency representatives. Based in Texas, they are responsible for developing new agency relationships and providing ongoing support to ANTIC's independent agent partners. Ortega, who is serving Texas, Oklahoma and Arkansas, has 13 years of experience in banking and lending. Most recently, he spent four years with a national underwriter. Reese has 20 years' experience in the

title and real estate related industries, both in direct operations and as an agency representative for a national underwriter.

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## Title Midwest Names President of Texas Division

Title Midwest Inc. recently appointed Marc Miller as president of Secured Title of Texas. In addition to Texas, Title Midwest has offices in Kansas, Missouri, Nebraska, Oklahoma, Minnesota and Wisconsin.

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## Title Partners Grows Business Development Team

Title Partners has expanded its business development team with the additions of Daniel Lorimer and Michael Haas as senior vice presidents. With nearly four decades of experience, Lorimer previously served as a senior vice president at a national title company based in Dallas-Fort Worth. In his new role, Lorimer is responsible for generating new transactions, providing responsive communication between clients and escrow teams, and maintaining existing accounts. With over 30 years of experience in the title industry, Haas is adept at resolving difficult title-related issues alongside underwriting counsel and handling closings for a diverse portfolio of clients. Haas previously served as a vice president of commercial services for a national title company. Haas' focus will be regional business development and advising clients on local real estate practices and underwriting policies.

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## First National Title Appoints EVP of Business Development

First National Title Insurance Co. (FNTI) announced the addition of Kyle Rank to its leadership team as executive vice president of business development. Rank is a 30-plus year industry veteran having previously held executive roles in sales, legal, and compliance in addition to having been a part owner of a title agency in the Midwest. In his most recent role, Rank acted as general counsel for Capital Title of Texas and previously headed up agency operations for a large regional underwriter.

## Attack the Fear

**IT'S BEEN AMAZING TO SEE HOW THE INDUSTRY** quickly adapted to the changes brought on by the COVID-19 pandemic. During the height of this ongoing crisis, title and escrow professionals worked around the clock to make closings convenient, safe and secure, which in turn kept the real estate industry firmly in the black.

While we should be proud of how we responded, we must continue to adapt. We're in the best fighting shape of our life. We have a confidence level I haven't seen in a long time. And we should feel confident. We handled this pandemic better than anyone. I think the fear of change is finally behind us as an industry. When we start to feel that worry, we must attack it head-on. We don't have a choice. We have an important job. An essential job. Even through the pandemic we've been doing what we've always done. Just differently.

While there remains plenty of uncertainty in our country, I look forward to leading our association during this time. Past President Mary O'Donnell did a fantastic job leading the industry as ALTA's first "virtual" president. The Board of Governors and ALTA staff continue to put our members in the best position to succeed by developing yearly strategic priorities. This helps us keep focused on key issues that will influence business—even when disaster strikes.

Believe it not, I look forward to leading the association during this time of great uncertainty in the country. These obstacles are opportunities and we're ready to tackle the latest priorities. In the coming year, ALTA will press forward on our Tell Our Story campaign, communicating with target audiences to describe who we are, the value we bring and the opportunities the industry provides. We will work hard to help more members add digital closing options to their businesses. Additionally, ALTA will educate members about cybersecurity threats to their businesses and the impact of data privacy laws. ALTA also will develop programs that will assist workers in navigating the changing workplace we all face. There is a lot of work to be done, and your association leaders are ready to roll up their sleeves and get started.

Companies—especially smaller operations—should continue to use the ALTA Marketplace as a resource to connect with vendors and find new products and tools. We want to give all title agencies the same access to the best and most forward-thinking vendors and business solutions. A lot of the time-consuming research is done so you can find exactly where to go, who to contact and take out the guesswork. The technologies and efficiencies the vendors in our ALTA Marketplace offer are what will keep you agile in this new world.

I encourage everyone in the industry to continue being open to change, especially when it comes to streamlining workflow, integrating technology and keeping up with the evolution of the industry's business model. Continue improving your operations by gaining more expertise and investing in long-term changes that will set up the industry for success for years to come. Fight the fear!



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