

# TITLE News

OCTOBER 2021

AMERICAN LAND TITLE ASSOCIATION

## Addressing a **Painful PAST**

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*ALTA Helps Find Solutions  
to Illegal Covenants in  
Public Records*



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DON'T MISS THIS MONTH'S  
DIGITAL ISSUE OF

# TITLENews

The digital edition of **TITLENews** includes a webinar recording detailing how title company owners can best evaluate, cultivate and execute a successful transition away from their title company through comprehensive succession planning strategies.

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# TITLENews

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## Finding Solutions

### **RACIALLY RESTRICTIVE COVENANTS ARE AN UNFORTUNATE LEGACY OF RACISM IN AMERICA.**

Their use not only segregated our society, but also hindered minority families' ability to access the greatest source of wealth in this country: homeownership.

The use of racial restrictive covenants removed the need for zoning ordinances. Because of this, they achieved the same end while shielding municipal leaders from both the responsibility and the blame.

The Fair Housing Act prohibits the publication or printing of discriminatory language and professionals in the land title industry go to great lengths to try and make sure these prejudiced words are omitted when documents are reproduced and distributed.

The United States' public records system provides a window into the country's past. The public records must continue to be free and open so we can understand the right to enjoy and access properties across the country. Even though legislation has rendered these discriminatory covenants invalid, they still often affect other restrictions that may still be in effect.

This edition's cover article digs into the history of racial covenants, the different approaches states have taken to address the issue, a federal bill and efforts by ALTA to collaborate with industry partners and academic experts on finding solutions.

The Uniform Law Commission (ULC) recently authorized the appointment of a new drafting committee to develop model legislation that would create a process for property owners to remove discriminatory restrictive covenants from deeds. The goal is to have a consistent, legal process for releasing and expunging such language when it is discovered in the chain of title.

In addition to the cover article, this edition includes a special section developed by ALTA's Discriminatory Covenants Workgroup that details the various approaches to addressing discriminatory covenants in the public land records. The document also highlights the pros and cons of each method.

In July, U.S. Sen. Tina Smith (D-Minn.) introduced the Mapping Housing Discrimination Act to research and examine discriminatory covenants in land records to help better understand current disparities in wealth and homeownership. ALTA, the National Association of Realtors and the Mortgage Bankers Association have all endorsed the bill. The legislation has 13 cosponsors, but a companion bill has not yet been filed in the House.

There isn't an easy fix for decades-old words enforcing hateful prejudices. As part of an industry that protects property rights and promotes fair housing, this is an effort that's a priority for the association. We are opposed to any form of housing discrimination. Protecting the property rights of all homebuyers is at the core of our values.



**JEREMY YOHE**

ALTA vice president of communications

## | Q2 Title Premium Volume Up 56%

The title insurance industry generated \$6.5 billion in title insurance premiums during the second quarter of 2021, according to preliminary data from the latest [ALTA Market Share Analysis](#). Title premium volume is up 56.3% compared to the same period a year ago.

Total operating income was up 52.4%, while operating expenses were up 50.8%, and loss and loss adjustment expenses were up 41.7%. This resulted in a net operating increase of 73.5%. Net income during the second quarter of 2021 was \$559.5 million, an increase of 84.6% compared to Q2 2020 and the highest second quarter ever.

The industry has paid \$221.1 million in claims so far in 2021. This is down from \$232.9 million in claims paid during the same period a year ago.



### Family Market Share (80.3%)

- Fidelity Family, 33.1%
- First American Family, 22.5%
- Old Republic Family, 15.1%
- Stewart Family, 9.6%

### Top Individual Underwriters

- First American Title Insurance Co., 19.9%
- Old Republic National Title Insurance Co., 14.7%
- Chicago Title Insurance Co., 14.0%
- Fidelity National Title Insurance Co., 13.6%
- Stewart Title Guaranty Co., 8.6%
- Westcor Land Title Insurance Co., 6.2%
- Commonwealth Land Title Insurance Co., 4.2%
- WFG National Title Insurance Co., 3.0%
- Title Resources Guaranty Co., 2.6%
- North American Title Insurance Co., 1.7%
- First American Title Guaranty Co., 1.4%

- First National Title Insurance Co., 1.0%
- Connecticut Attorneys Title Insurance Co., 0.9%
- First Canadian Title Insurance Co., 0.9%
- Alliant National Title Insurance Co., 0.8%
- Investors Title Insurance Co., 0.8%
- Stewart Title Insurance Co. of New York, 0.8%
- National Title Insurance of New York, 0.7%
- Alamo Title Insurance Co., 0.5%
- AmTrust Title Insurance Co., 0.4%

### Top States

- Texas, \$861,348,871 (53.3%)
- California, \$755,634,478 (57.6%)
- Florida, \$716,995,561 (66.9%)
- New York, \$328,137,447 (66.5%)
- Pennsylvania, \$294,361,193 (77.1%)

[Click here](#) for more market share data.

## | ALTA Announces AccuTitle as an Elite Provider



The ALTA announced it has named [AccuTitle](#), home of title management platforms TitleFusion, Closers' Choice, Landtech, and TrackerPro, as an ALTA Elite Provider.

ALTA's [Elite Provider Program](#) features distinguished service providers committed to furnishing extensive benefits to the title insurance and settlement services industry. Elite Providers promote the highest industry standards and provide effective solutions for ALTA members' critical needs.

Established in 2003, AccuTitle offers title insurance management platforms to automate and streamline the title production and closing process. With a focus on a tailored customer experience, AccuTitle aims to deliver unique and quality service to all clients regardless of agency size.

[AccuTitle](#) will offer ALTA member companies a 10% discount on the initial setup and training fee for new customers.



# FNF *is* ALL IN

The FNF Family of Companies is ALL IN for our nationwide agent network all year long. We provide the financial strength and expert guidance our people know they can rely on.

This year, there are many reasons FNF is for you. We've launched our educational Title Journey that is a dream vacation – as long as that dream is learning everything you can about title for new hires and experienced pros alike. Our FNF UNPLUGGED podcast touches on the important title topics, and thousands have tuned in to the show, and the ALTA award-winning Digital Closing Hub is ready to inform and propel consumers into the future.

For all these reasons and more, the FNF Family of Companies is ALL IN for our team, our agents and our entire industry. Let us lead you into a great tomorrow, and don't leave anything up to chance.



## ALTA, Trade Groups Support Bill to Create CFPB Bipartisan Leadership Structure

ALTA joined 27 other trade groups in a [letter](#) to Rep. Blaine Luetkemeyer (R-Mo.) expressing support for H.R. 4773, the Consumer Financial Protection Commission Act. The bill would replace the Consumer Financial Protection Bureau's (CFPB) single director structure with a five-person, bipartisan commission. The bill is like bipartisan legislation previously introduced in Congress and supported by the financial services industry.

"A Senate-confirmed, bipartisan commission will provide a balanced and deliberative approach to supervision, regulation, and enforcement by encouraging input from all stakeholders. The current single director structure leads to uncertainty as administrations transition," the letter said. "This uncertainty is not only borne by financial institutions providing significant lending services, but it negatively impacts America's consumers, small businesses, and our local economies. Dramatic shifts in the CFPB's philosophy and approach with each change in presidential administration make it difficult for lenders and small businesses to plan for the future."

In 2017, ALTA commissioned a [poll showing](#) that most Americans support converting the CFPB's leadership to a bipartisan commission. Morning Consult found that three in five voters said a commission would lead to consumer protections that are fairer, more accountable, more representative and more transparent.

## 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: 45
- New Associate Members: 5
- New Attorney Members: 18
- State with the most new members: Texas with 9
- Total Members: 6,037

## ALTA 2021 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 2021, \$388,334 has been pledged to TIPAC from 595 people. In addition, \$141,000 from 22 companies has been pledged to the TIPAC Education Fund. Check out who has supported the industry at [alta.org/tipac](https://alta.org/tipac).

# CALENDAR

## 2021 ALTA CONFERENCES

### ALTA SPRINGBOARD

March 15-16

Tampa, Fla.

### ALTA ADVOCACY SUMMIT

May 16-18

Washington, D.C.

## 2021 STATE CONFERENCES

### VIRGINIA

Oct. 18-22

Virtual

### NEW ENGLAND

Oct. 21-24

Newport, R.I.

### FLORIDA

Nov. 8-10

Ponte Vedra, Fla.

### KENTUCKY

Nov. 11

Louisville, Ky.

### LOUISIANA

Dec. 2-4

New Orleans, La.



## NEWS TO SHARE?

If you have information you'd like us to consider for TITLE News, send company announcements to [communications@alta.org](mailto:communications@alta.org).



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# Addressing a **Painful** **PAST**

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*ALTA Helps Find Solutions  
to Illegal Covenants in  
Public Records*

**By Jeremy Yohe**

## DURING THE 20<sup>TH</sup> CENTURY,

discriminatory restrictive covenants peppered property records in communities across the country. In Minneapolis, the first racial covenant appeared in 1910, when Henry and Leonora Scott sold a property to Nels Anderson. The deed conveyed in that transaction contained what would become a common restriction, stipulating that the “premises shall not at any time be conveyed, mortgaged or leased to any person or persons of Chinese, Japanese, Moorish, Turkish, Negro, Mongolian or African blood or descent.”

Racially restrictive covenants refer to contractual agreements that prohibited the purchase, lease or occupation of a piece of property by a particular group of people. Racially restrictive covenants were not only mutual agreements between property owners in a neighborhood, but were also agreements enforced through the cooperation of real estate boards and neighborhood associations.

The use of racial restrictive covenants emerged in 1917, when the U.S. Supreme Court deemed city segregation ordinances illegal. That year, in *Buchanan v. Warley*, the court ruled that outright segregation ordinances violated the 14th Amendment. After the ruling, segregationists turned to restrictive neighborhood covenants. Racial deed restrictions became common after 1926, when the U.S. Supreme Court validated their use in the case *Corrigan v. Buckley*. The restrictions were an enforceable contract and an owner who violated them risked forfeiting the property.

The court held that while states are barred from creating race-based legislation, private deeds and developer plat maps are not similarly affected by the 14th Amendment. This was because individuals entering into covenant agreements were doing so of their own volition, whereas segregation ordinances were forced upon populations from the state and municipal levels. Racially restrictive covenants

superseded segregation ordinances as instruments to promote and establish residential segregation in U.S. cities, according to the court.

The National Housing Act of 1934 also played a part in popularizing these covenants. Passed during the Great Depression to protect affordable housing, the legislation introduced the practice of redlining.

The NAACP recognized these covenants were a threat to racial equality. The civil rights organization launched a legal campaign against covenants in the 1940s. In 1945, an African American couple named J.D. and Ethel Shelley knowingly purchased a restricted home in St. Louis. They made the purchase to protest the legitimacy of the restrictive covenant that had been drafted by the St. Louis Real Estate Exchange. The following year, in *Shelley v. Kramer*, the circuit court decided that the restrictive covenant was unenforceable because it had been haphazardly assembled.

The Missouri Supreme Court, however, rejected that ruling and upheld the covenant by invoking *Corrigan v. Buckley*. The plaintiffs appealed to the U.S. Supreme Court, which in 1948 ruled that the racial covenants were legally unenforceable and violated the Equal Protection Clause of the 14th Amendment. Although racial restrictive covenants were no longer legally enforceable, they were not illegal to establish and privately enforce.

4. That no building shall be left with paper exposure or with the exterior incomplete.  
5. That the said land or buildings thereon shall never be rented, leased or sold, transferred or conveyed to, nor shall same be occupied exclusively by person or persons other than of the Caucasian Race.  
6. The forgoing covenant and restriction shall run with the land and shall bind the grantee herein and the heirs, executors, administrators, successors and assigns of said grantee until the first day of January A.D. Nineteen hundred and Forty.

UNIVERSITY OF MINNESOTA

Example of a racial covenant in Hennepin County, Minn.

A fellow cannot interest the dollar without using dollar instincts, and this lot is purposely slashed in price to attract the dollar. The map shows you where it is and what it looks at. The lot has curb and gutter, stone sidewalk, city water, gas and electricity. It is a beautiful lot, high and commanding, with a frontage of 75 feet and a depth of 140 feet. Mr. Stiff lives next door, at 2815 Benton boulevard.

Old price \$4,000. Today's discount \$1,250. New price \$2,750. Terms, \$750 down, balance on or before 3 years; 6% interest.

I appeal to the instincts of those about to marry. Isn't this the most remarkable offering you ever heard of. Restrictions—

The party of the second part hereby agrees that the premises hereby conveyed shall not at any time be conveyed, mortgaged or leased to any person or persons of Chinese, Japanese, Moorish, Turkish, Negro, Mongolian, Semetic or African blood or descent. Said restrictions and covenants shall run with the land and any breach of any or either thereof shall work a forfeiture of title, which may be enforced by re-entry.

### Lake Street Frontage

Advertisement placed by Edmund G. Walton in the Minneapolis Morning Tribune on Jan. 12, 1919.

Because of this, these covenants remained commonplace in much of the nation until 1968, when the Fair Housing Act made them explicitly illegal. The act prohibits the publication or printing of any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin.

Remnants of these covenants remain, however, in public land records in most states. Because of this, title companies go to great lengths to not republish them when discovered in a title search. Some of these steps include:

1. Leaving a blank where the covenant appeared and state, "This covenant omitted."
2. Crossing out the covenant
3. Stamping, typing or printing across the covenant or in the margin, "This covenant omitted."
4. Adding on the first page of the instrument a stamp that omitted any discriminatory covenant.

Lastly, Schedule B in the title insurance policy says,

"Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage."

Jerris Leonard, an assistant attorney general for civil rights during the Nixon administration, sent letters to title companies asking them to not republish the restrictive covenants as a potential violation of the FHA. The industry voluntarily stopped.

### Federal Proposal

In July, U.S. Sen. Tina Smith (D-Minn.) introduced the [Mapping Housing Discrimination Act](#) to research and examine discriminatory covenants in land records to help better understand current disparities in wealth and homeownership.

The legislation would:

- Create a competitive grant program for educational institutions to conduct primary data analysis of local historic property records from 1850-1988 for the purpose of identifying racial covenants and racially restrictive language.
- Support efforts by local governments to digitize historic deeds and other property records at the local level.
- Create a national, publicly available database at the Department of Housing and Urban Development of historical housing discrimination patterns in property records, including local data sets produced by grant recipients.

Sen. Smith is chair of the Senate's Housing, Transportation and Community Development Subcommittee. She said this is one of the ways she can work to identify the source of disparities in wealth and homeownership and work to close those gaps.

"Racially restrictive covenants and other forms of historic housing discrimination played a key role in shaping neighborhoods during the 20th century, and the legacy of these policies is still felt today," Sen. Smith said. "We know that Black homeownership lags in the Twin Cities, and families of color are still impacted by the undervaluing of homes in certain neighborhoods. I'm inspired by the work being done at the University of Minnesota to map racially restrictive covenants so we can better understand which communities were impacted by these policies in our own backyard. My bill would support other universities in doing the same kind of research so that more communities have a better understanding of past housing discrimination and can

address these disparities going forward.”

Sen. Smith’s legislation is cosponsored by Sens. Richard Blumenthal (D-Conn.), Sherrod Brown (D-Ohio), Bob Casey (D-Pa.), Martin Heinrich (D-N.M.), Bob Menendez (D-N.J.), Chris Murphy (D-Conn.), Amy Klobuchar (D-Minn.), Jon Ossoff (D-Ga.), Alex Padilla (D-Calif.), Bernie Sanders (I-Vt.), Chris Van Hollen (D-Md.), Elizabeth Warren (D-Mass.) and Ron Wyden (D-Ore.).

“Historic land records often exist in paper form, making the search for discriminatory covenants onerous,” said Diane Tomb, chief executive officer of ALTA. “Providing funding to research and document discriminatory covenants addresses this challenge and provides a critical first step toward fully understanding the negative impacts of these abhorrent covenants.”

## Different Approaches

Expunging of records containing discriminatory covenants impacts the chain of title and jeopardizes property rights and the ability to buy, sell or refinance property. With no uniform method, state lawmakers have taken varied approaches to address discriminatory covenants in their public records. The most common options include notification, repudiation, modification and redaction. Each of these has various benefits and drawbacks.

### Texas

The Texas legislature passed a bill earlier this year that provides a process for property owners to remove discriminatory restrictive covenants from deeds.

Senate Bill 30 provides a mechanism for a judge to remove by an order language from deeds that prohibits ownership based on race, color, religion or national origin in violation of Texas statutes. It also instructs the county clerk to file and index the deed modification.

Members of the Texas Senate unanimously voted 31-0 that restrictive deeds or covenants that deny property ownership to anyone based on the person’s race were wrong. The bill was introduced by state Sens. Royce West, John Whitmire and Bryan Hughes, and was championed in the House by Rep. Jeff Leach, chair of the House Judiciary and Civil Jurisprudence Committee. The Texas Land Title Association supported the bill after working with the authors.

“We were proud to work with Senator West in helping formulate a bill which would allow for removal of these repugnant covenants from deeds while preserving the integrity of Texas land records,” said Aaron Day, TLTA’s director of government affairs and counsel.

Texas Property Code approved by the legislature in 1983 declared discriminatory deed restrictions void and

no longer in effect.

SB30 provides a process in Texas for the language to be removed from deeds without separate court proceedings. The bill requires the Texas attorney general to create a form that can be used by property owners or a person with owner’s permission to request in an expedited and ministerial process that a judge issue an order removing the discriminatory clauses from the deed.

“SB30 removes another brick from the walls that divide people based on their color or race that generations of conscientious Americans have struggled to dismantle,” Sen. West said. “Even though the Supreme Court ruled that these type restrictions were in violation of the 14th Amendment decades ago, property owners and scholars say the language can still be found in deeds, not only in Texas, but across the country. There are issues that my colleagues disagree on and may continue to disagree on, but we stand united today in saying that such discriminatory edicts in legal documents in our state should be a thing of the past.”

### Indiana

Indiana Gov. Eric Holcom signed legislation allowing for a notice to be attached rejecting any of these covenants. Authored by state Rep. Jerry Torr, [House Bill 1314](#) would allow a person to file a statement or notice that a recorded discriminatory covenant is invalid and unenforceable.

The Indiana State Land Title Association (ILTA) supported the bill. Testifying before the judiciary committee, Elizabeth Berg, president of ILTA and northeast region underwriting counsel for Agents National Title Insurance Co., said covenants limiting ownership and occupancy to members of the “pure white race” pepper Indiana’s land records.

“While these racist covenants are no longer enforceable, they are still present in a person’s chain of title,” Berg said. “The Indiana Land Title Association regularly addresses these statements with our fellow Hoosiers and while many of us cannot possibly understand how these statements would make someone feel, we know they are terrible and still have the power to cause pain.”

The legislation defines a discriminatory restrictive covenant as any restrictive covenant on real property that if enforced would violate the federal Fair Housing Act’s prohibition against discrimination based on race, color, sex, religion, familial status or national origin. Also, the bill’s definition includes any restrictive covenant that violates the Constitution’s Equal Protection Clause. The bill has been amended to add “disability” into the law to mirror the Fair Housing Act.



### **Florida**

In September 2020, Florida Gov. Ron DeSantis signed SB 374 into law. The legislation “extinguishes discriminatory restrictions from certain real estate documents, such as deeds.” The bill clarifies that under the Florida Fair Housing Act (FFHA) an alleged victim of housing discrimination may file a civil action regardless of whether he or she has filed a complaint with the Florida Commission on Human Relations; the commission has resolved a complaint (if the victim chose to file one); or any amount of time has passed since the victim filed a complaint with the commission.

During the summer of 2020, Anabelle Dias, a defense attorney in Tallahassee, Fla., discovered discriminatory language in an unenforceable section of a seven-page covenant for a home she wanted to purchase. The covenant read, “No person of other than the Caucasian race shall own, use or occupy any property in said subdivision except that this covenant shall not prevent occupancy by domestic servants of a different race or nationality employed by an owner or tenant.”

While Florida already has anti-discrimination housing laws, Dias said the legislation offers progressive changes.

“(It) allows an aggrieved person to commence a suit without having to first exhaust administrative remedies or petition for an administrative hearing, simplifying and expediting the process for challenging discriminatory housing practices,” Dias said.

The law, however, is unclear on how the language can be removed or who is responsible for redacting it. There’s also no directive on where property owners or homebuyers can go to start and finish the process.

### **California**

In September, California’s first chamber passed AB 1466, which would implement the modification process. The bill would authorize a title company, escrow company, county recorder, real estate broker, real estate agent or other person to record a Restrictive Covenant Modification to correct illegal language in a land document. Beginning July 1, 2022, and upon request before escrow closes, the title company or escrow company directly involved in the pending transaction would need to assist in the preparation of the Restrictive Covenant Modification.

Each county recorder would be required to prepare an implementation plan by July 1, 2022, to identify and redact unlawfully restrictive covenants in their records. The County Recorders Association of

California would be required to submit reports to the legislature by Jan. 1, 2023, and Jan. 1, 2025, on the

progress of each county’s restrictive covenant program.

The bill was introduced by assembly members Kevin McCarty, Mia Bonta and David Chiu.

### **Michigan**

Hoping to raise awareness about these covenants in their state, University of Michigan Law School professor Michael Steinberg and urban planning assistant professor Robert Goodspeed presented findings to the Ann Arbor Planning Commission in January.

Despite Ann Arbor’s progressive reputation, Steinberg and Goodspeed found 66 subdivisions within the city limits had some variation of racial discrimination in their covenants, pointing to the legacy of institutionalized racism in the community. The two professors found one of the most common restrictive covenants reads: “no part of said land shall be occupied by persons not of the Caucasian race except as guests or servants.”

“Most Ann Arbor residents believe that they live in a progressive community that is enlightened on issues of race,” Steinberg wrote in a February 2020 letter to the members of the project committee. “Racism and white supremacy may plague many other parts of the country, the thinking goes, but Ann Arbor is an island where people of color have enjoyed equal opportunity for generations. The reason Ann Arbor neighborhoods are still segregated, many think, is because housing prices are so high in the city, not because of race discrimination.”

### **An ALTA Priority**

Addressing the existence of discriminatory covenants in land records is a major priority for ALTA. In the past year, ALTA convened a work group of industry experts to examine the scope of the problem, as well as key legislative approaches to remedying discriminatory covenants in land records. The work group is actively collaborating with industry partners and academic experts on recommendations and best practices.

“The title industry is uniquely positioned to be a thoughtful partner in addressing discriminatory covenants and working to end housing discrimination,” Tomb said. “ALTA is strongly opposed to any form of housing discrimination and is committed to proactively working toward solutions that protect the property rights of all homebuyers.” ■



**JEREMY YOHE** is ALTA’s vice president of communications. He can be reached at [jyohe@alta.org](mailto:jyohe@alta.org).

# HOUSING DISCRIMINATION

## *Addressing Illegal Covenants in Historic Land Records*

**DOCUMENTS IN THE LAND RECORDS** provide public notice of property ownership and indicate when real estate is subject to a mortgage, judgment, or other encumbrance. These public records are accessed, reviewed, and used in every real estate transaction, including refinancing of home loans. A property's chain of title includes transfers of ownership and contains other important records impacting the property. Removal of documents or pertinent information from the land records creates breaks in the chain of title, which can result in ownership disputes, a loss of property rights or an inability to buy, sell, or refinance property.

**I**N THE EARLY PART OF THE 20TH CENTURY, discriminatory covenants barring the sale or lease of property based on race, ethnicity or religion were inserted in some property records as part of deeds, plats and covenants, conditions, and restrictions (CC&Rs). Two decades after the landmark US Supreme Court case *Shelley v Kraemer* established racially restrictive covenants were unenforceable under the 14th Amendment, the federal Fair Housing Act of 1968 made discriminatory covenants illegal and unenforceable.

Based on prohibitions in the Fair Housing Act on republication of discriminatory covenants, and on the advice of the Department of Justice, title insurers do not include discriminatory covenants in title reports. Title commitments and policies include a disclaimer that discriminatory covenants may exist but are not reprinted. The description below is taken from the 2021 ALTA policy forms.

*“Discriminatory Covenant”*: Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.

The American Land Title Association (ALTA) is strongly opposed to any form of housing discrimination and is committed to proactively working toward solutions that protect the property rights of all homebuyers.

Colleges, universities, and non-profits around the country are engaged in efforts to identify and document discriminatory covenants in land records for historic and educational purposes. These initiatives have resulted in maps and visualizations that enhance understanding of the impact and harm caused by discriminatory covenants. In 2021, legislation was introduced by US Senator Tina Smith (D-MN) would help fund the continuation of these initiatives.

Currently, there is no model law or uniform legislative approach to address previously recorded discriminatory covenants that still exist in public land records. However, state lawmakers have considered one or more of the following legislative approaches to address illegal and unenforceable discriminatory

covenants in public land records. These legislative approaches can be combined, and bill text authorizing research, education and awareness initiatives regarding discriminatory covenants can be included.

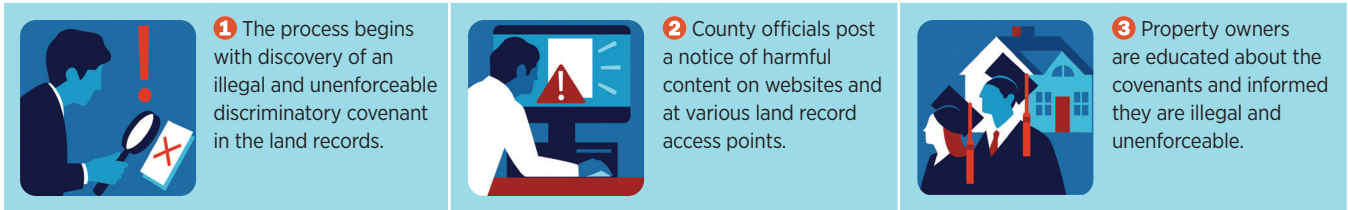
1. **Notification** posted by county offices on websites and at record access points indicating the historical land records may contain harmful content in illegal and unenforceable discriminatory covenants. These notices are general and do not identify specific recorded instruments.
2. **Repudiation** of identified discriminatory language by recording a declaration in the land records of the illegal and unenforceable nature of discriminatory covenant(s) associated with a particular property.
3. **Modification**, through judicial or public official action, of the land record(s) containing an identified discriminatory covenant, resulting in creation of a superseding document without the discriminatory language.
4. **Redaction**, through judicial or public official action, of discriminatory covenants in identified documents within the land records, resulting in removal of the discriminatory language from existing land records.

With each of these methods, lawmakers should consider the potential for inadvertent removal of enforceable records or content. Repudiation measures avoid this potential outcome. Modification approaches, with care to remove only the illegal and unenforceable content, minimize this risk. Other approaches, such as expungement of entire records containing illegal covenants threaten the chain of title and create gaps in land records that jeopardize consumer property rights and the ability to buy, sell or refinance property.



## NOTIFICATION APPROACH

Notification posted by county offices on websites and at record access points indicating the historical land records may contain harmful content in illegal and unenforceable discriminatory covenants. These notices are general and do not identify specific recorded instruments.



### Key Components

- Authorization for county offices to post notice of harmful content on websites and at various land record access points.

### PROs

- An expedient process with simple implementation at little to no cost for taxpayers or property owners.
- Maintains clarity in the chain of title regarding previously recorded covenants.

- By educating the ordinary reader that these covenants are void and unenforceable, this approach allows for identification of a discriminatory covenant without republication, which may violate state and federal fair housing laws.
- Addresses all discriminatory covenants existing in the land records.

### CONS

- This approach, unless combined with other approaches, does not address discriminatory language in specifically identified documents.

## REPUDIATION APPROACH

Repudiation of identified discriminatory language by recording a declaration in the land records of the illegal and unenforceable nature of discriminatory covenant(s) associated with a particular property.



### Key Components

- Authorization of a uniform process and standardized forms allowing property owners and homeowners' associations (HOAs) to record language repudiating discriminatory covenants previously included in records pertaining to their property.
- Use of permissive language in the statute, so homeowners and HOAs are not required to act on repudiating discriminatory covenants that are often difficult to find or identify in historical records.
- Avoid any requirement causing reproduction or republication of the discriminatory covenant, which would

- violate the Fair Housing Act of 1968.
- Reference state and federal fair housing laws as a basis for action.

### PROs

- Empowerment to take action to repudiate discriminatory covenants that violate equality.
- An expedient process with simple implementation at little to no cost for taxpayers or property owners.
- Clarity in the chain of title regarding previously recorded covenants.
- By educating the ordinary reader that these covenants are void and unenforceable, this approach allows for identification of a discriminatory covenant without republication that may

- violate state and federal fair housing laws.
- Identifies, with context and without republication, the existence of a discriminatory covenant in the historic record for organizations tracking the prevalence and impact of these covenants.

### CONS

- This method does not provide for validation by a legal authority of whether a specific provision is in fact illegal under fair housing laws.

### Example

Indiana

<http://iga.in.gov/legislative/2021/bills/house/1314>

## MODIFICATION APPROACH

Modification, through judicial or public official action, of the land record(s) containing an identified discriminatory covenant, resulting in creation of a superseding document without the discriminatory language.



## Key Components

- Identify parties authorized to undertake the modification process, given the superseding document must exactly match the original record, except for the removed discriminatory covenant, in order to be used and referenced in future transactions:
  - Alternative 1: Create a judicial process for generation of a modified superseding document with the discriminatory covenant removed.
  - Alternative 2: Identify public officials authorized to create a superseding document with the discriminatory covenant removed (i.e., county attorney or state attorney general).
- Produce uniform state-wide standards for modification of documents:
  - Create a document modification request form
  - Require recording of a standard form that includes a list of amendments to documents in chain of title, reference the original document, the new document, and any court proceedings, along with pertinent information regarding the generation of the superseding document (i.e., dates, document preparer).
  - Set a standard for indexing updates and use of/reference to the modified document for future transactions.
- The original document should never be completely removed from the public record during the modification process.
- Lis pendens should be used to provide notice of court or modification activity.
- Documents recorded during the record modification process are not affected.
- The modified document is in effect only after it is recorded in the public land records.
- Allocate funds for implementation so there are reduced or no costs for processing and recording.
- Address liability for inadvertent removal of enforceable covenants or improper indexing of the modified document, likewise inadvertent failure to remove a specified document or inadvertent removal of an enforceable document.
- Conform to existing state laws relating to property (i.e., marketable title, constructive notice or document recording priority status).
- Authorizes HOAs and other groups to use this process with permission from or notice to the property owner(s).

## PROs

- Modification can be done on records regardless of the medium they exist in at county offices (paper, digital, microfilm, etc.).
- The document modification process by an authorized party allows for certainty around the continued transfer of property and reliability of title.
- The standards provide a defined and narrowly tailored process that gives ample notice to those relying on information contained in the land records.
- Identifies, with context, the existence of a discriminatory covenant in the historic record for organizations tracking the prevalence and impact of these covenants.

## CONs

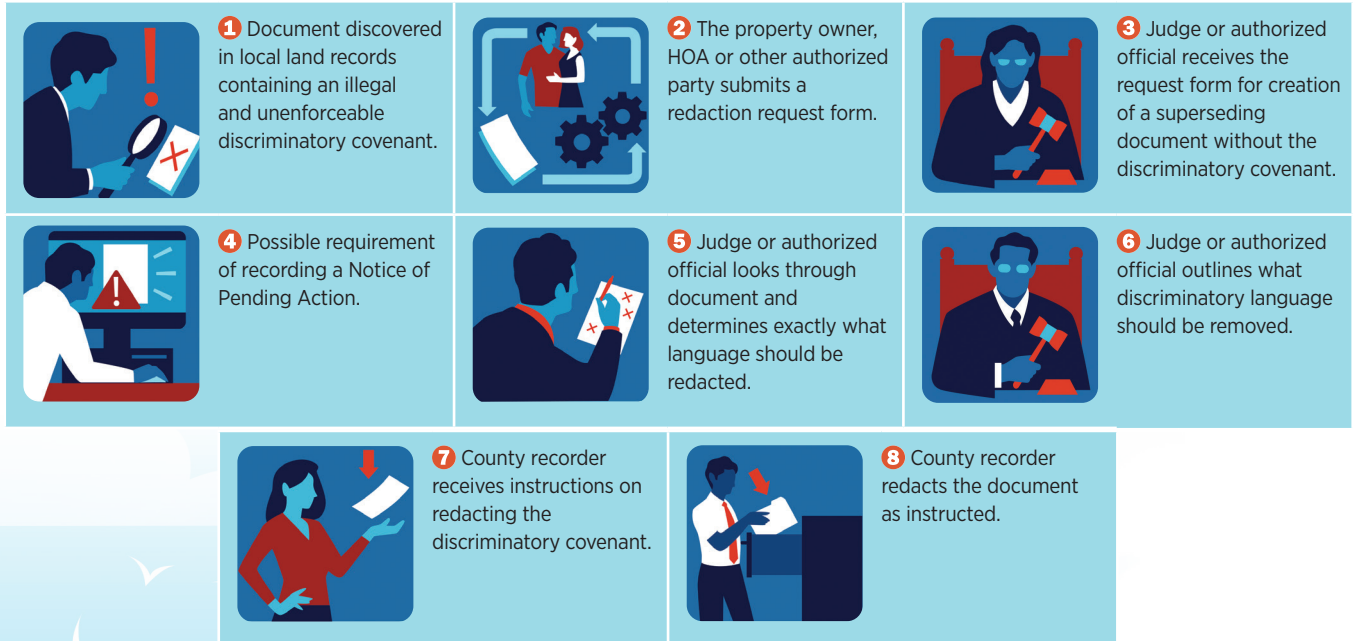
- Implementation costs for modifying and recording the superseding document.
- Multiple-step process, which may vary by state, to get the modified document recorded in the land records and inserted into the chain of title.
- Liability issues of inadvertent removal of enforceable covenants in the modified document or errors in the indexing updates.

## Example

Texas  
<https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87RE&Bill=SB30>

## REDACTION APPROACH

Redaction, through judicial or public official action, of discriminatory covenants in identified documents within the land records, resulting in removal of the discriminatory language from existing land records.



## Key Components

- Identify parties authorized to redact discriminatory covenants from the land records:
  - Alternative 1: Create a judicial process for redaction of discriminatory covenants.
  - Alternative 2: Identify the public officials authorized to redact discriminatory covenants (i.e., county attorney or state attorney general).
- Produce uniform statewide standards for redaction of documents:
  - Create a document redaction request form.
  - Establish a standard and process for determining what language should be redacted.
  - The original document should never be completely removed from the public record during the redaction process.
  - Lis pendens should be used to provide notice of redaction activity.
  - Outline procedures for managing redaction of covenants in various mediums (paper, digital, microfilm, etc.)
  - Documents recorded during the redaction process are not affected.
  - The redacted document is in effect only after it is recorded in the public land records.
- Address liability for inadvertent removal of enforceable covenants.
- Allocate funds for implementation so there are reduced or no costs for processing and recording.
- Conform to existing state laws relating to property (i.e., marketable title, constructive notice or document recording priority status).
- Identify ways to maintain the historic record by sending a copy of the unredacted document to state archives or separately maintain the unredacted document at the county level.

## PROs

- Full elimination of the discriminatory covenant from the public land records.
- No effect to the recording of the original document, which still can be used and referenced once the discriminatory covenant is redacted.
- The document redaction process by an authorized party allows for certainty around the continued transfer of property and reliability of title.
- The standards provide a defined and narrowly tailored process that give ample notice to those relying on information contained in the land records.

## CONs

- Implementation costs for redacting the document.
- Implementation costs for redacting the document.
- Determining how to redact records in various mediums (paper, digital, microfilm, etc.) and addressing the inability to redact a document due to the archiving of certain records.
- Inability or inconsistency by land records officials in identifying all locations of recorded documents and determining which documents can or cannot be redacted.
- Higher risk of harm caused by inadvertent redaction of enforceable covenants.
- Liability issues of inadvertent removal of enforceable covenants.
- The need to maintain multiple databases in order to preserve the historical record for the purpose of tracking the prevalence and impact of these covenants.

# USDA TO PROVIDE \$67M TO HELP HEIRS RESOLVE ALTA Supports Fair and Equitable Framework to Settle

**THE U.S. DEPARTMENT OF AGRICULTURE (USDA) IS PROVIDING \$67 MILLION** in competitive loans through the new Heirs' Property Relending Program (HPRP).

The program aims to help agricultural producers and landowners resolve heirs' land ownership and succession issues. Intermediary lenders—cooperatives, credit unions and nonprofit organizations—can apply for loans up to \$5 million at 1% interest once the Farm Service Agency (FSA) opened the two-month signup window in late August.

After the FSA selects lenders, heirs can apply directly to those lenders for loans and assistance. Heirs' property issues have long been a barrier for many producers and landowners to access USDA programs and services. The USDA said the relending program provides access to capital to help producers find a resolution to these issues.

"While those affected are in all geographic and cultural areas, many Black farmers and other groups who have experienced historic discrimination have inherited heirs' property," said Tom Vilsack, secretary of the U.S. Department of Agriculture. "USDA is committed to revising policies to be more equitable and examining barriers faced by heirs' property owners is part of that effort. This helps ensure that we protect the legacy of these family farms for generations to come."

HPRP is a loan and will need to be repaid as directed by the 2018 Farm Bill.

Heirs' property is a legal term that refers to family land inherited without a will or legal documentation of ownership. The FSA considers heirs' property to be land that has been passed down to subsequent generations via intestate succession (that is, without a will) or via a will that divides real estate assets equally among all

heirs. When a landowner dies without a last will and testament or estate plan, state law determines which heirs or classes of family members inherit the land of the deceased, and the ownership share for each heir.

This form of property ownership results in the land being owned in common by all heirs-at-law, each of which owns a fractional interest in the land. As a result, the absence of clear title prevents the owners who farm the land and pay real estate taxes from gaining access to the legal, financial and managerial transactions needed to effectively manage the land.

Prior to the 2018 Farm Bill, heirs' property owners were not eligible for programs administered by the Department of Agriculture, including the loans and conservation funding that keep many rural landowners afloat.

In the 115th Congress, Sen. Tim Scott (R-S.C.) worked with then-Sen. Doug Jones of Alabama to introduce the Fair Access for Farmers and Ranchers Act, a bill aimed at remedying heirs' property issues and assisting heirs' property owners with gaining access to USDA programs. Over a third of Black-owned land in the South was passed down informally, rather than through deeds and wills, according to reports.

"For so long too many farmers have been locked out of USDA programs through no fault of their own," Sen. Scott said. "I am glad the department is implementing our commonsense solution, which will open the door to landowners having more options and access to programs. This will be a game changer for heirs' property owners in South Carolina and across the country."



# REAL ESTATE LAND OWNERSHIP AND SUCCESSION ISSUES

## Disputes

### Eligible Lenders

To be eligible to lend under the HPRP, intermediary lenders must be certified as a community development financial institution and have experience and capability in making and servicing agricultural and commercial loans that are similar in nature.

If applications exceed the amount of available funds, those applicants with at least 10 years or more of experience with socially disadvantaged farmers that are in states that have adopted a statute consisting of enactment or adoption of the Uniform Partition of Heirs Property Act (UPHPA) will receive first preference.

The UPHPA helps preserve family wealth passed to the next generation in the form of real property. If a landowner dies intestate, the real estate passes to the landowner's heirs as tenants-in-common under state law.

States that have adopted UPHPA include Alabama, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Iowa, Illinois, Mississippi, Missouri, Montana, Nevada, New Mexico, New York, Rhode Island, South Carolina and Texas. This also includes the Virgin Islands.

In addition, a secondary preference tier has been established for lenders that have applications from ultimate recipients already in process, or that have a history of successfully relending previous HPRP funds. When multiple applicants are in the same tier, or there are no applicants in tier one or two, applications will be funded in order of the date the application was received, according to the USDA.

Selected intermediary lenders will determine the rates terms, and payment structure for loans to heirs. Interest rates will be the lowest rate sufficient for intermediaries to cover the cost of

operating and sustaining the loan.

ALTA supports the thoughtful approach the UPHPA takes to provide a fair and equitable framework for resolving disputes between the owners of heirs' property. In too many cases, the forced sale of heirs' property results in devastating outcomes on personal and economic levels.

### Relending to Heirs

Heirs may use the loans to resolve title issues by financing the purchase or consolidation of property interests and financing costs associated with a succession plan, according to the USDA. This may also include costs and fees associated with buying out fractional interests of other heirs in jointly owned property to clear the title, as well as closing costs, appraisals, title searches, surveys, preparing documents, mediation and legal services.

Heirs may not use HPRP loans for any land improvement, development purpose, acquisition or repair of buildings, acquisition of personal property, payment of operating costs, payment of finders' fees or similar costs.

Intermediary lenders will make loans to heirs who:

- Are individuals or legal entities with authority to incur the debt and to resolve ownership and succession of a farm owned by multiple owners.
- Are a family member or heir-at-law related by blood or marriage to the previous owner of the property.
- Agree to complete a succession plan.





# Don't Forget to Plan Your Integration as M&A Activity Heats Up

Technology and Cybersecurity Must Be Part of Planning

By Kevin Ninceheler



**T**here has been a lot of merger and acquisition (M&A) activity in the settlement services industry over the past 12 months—with good reason. While it’s fun to think about the exponential growth that can come with acquiring another business or the substantial payoff that can come from cashing in on the business one has worked so hard to build, there’s another side to the transaction that doesn’t often get enough attention. Unfortunately, it often doesn’t come to light until long after the deal is made.

How does the buyer of an existing title agency (or agencies) combine two established operations into one, well-oiled, productive machine?

While merging the cultures and adopting the same vision from office to office has been well covered elsewhere, one factor that surprisingly and too frequently gets short shrift is the merger of operational systems and technology—or the lack thereof. Too many acquiring agents have learned the hard way that poor (or no) due diligence into the acquired firm’s existing technology and security can lead to unpleasant and costly surprises. And a lack of adequate, strategic planning for integrating multiple systems has turned more than a few mergers and acquisitions from profitable ventures into money pits.

It all starts with the production system.

No title agency achieves success without a solid production technology platform and an operational plan that maximizes that system for the way the agency does business. So, it stands to reason that due diligence before acquiring or merging with an existing title agency demands an understanding of the production system used by the agency to be acquired. But simply having technology from the same provider doesn’t necessarily mean the two systems are compatible.

David Stauffer, vice president of operations for Title Midwest, explained that not every production

system, even those from the same developer, is as it seems.

“Don’t assume that if the agency you’re acquiring uses a production system from the same developer that you do, they’ll align perfectly,” he said. “More and more agents are demanding special customization from the producer to fit the way they do business.”

The differences aren’t necessarily limited to customization, either.

“Even if you each have the exact same production system, the way each business uses that technology could be incredibly different,” Stauffer said. “One firm may use the invoicing feature while the other uses something proprietary. It’s not an automatic match.”

Just as it’s important to understand how the agency being acquired conducts its business, it’s extremely important to understand how that firm also uses its technology. Simply learning the name of the system is not nearly enough.

## Did the Business Being Acquired Pay Attention to Cybersecurity?

While any successful title agency really needs a comprehensive cybersecurity plan and the resources to implement it, it’s imperative that the acquiring agency understand what the agency its acquiring did (or did not do) with respect to its own security prior to the purchase. The customers and data being acquired may already be compromised. Not every ransomware attack happens within hours or days of a system compromise. And yet, far too many agencies continue to treat cybersecurity as a one-time task on a checklist, failing to implement a continuous (and regularly updated) defense.

Chris Cantrell, owner of Foundation Title and Escrow in Franklin, Tenn., implores acquiring agents to drill into cybersecurity systems and planning that the acquired firm already has in place.

“It always amazes me how little

## Maximize Your Company’s Value



Designing an Exit Plan to Maximize Value and Ensure a Successful Transition

planning has gone into some companies' security or how unorganized they are," he said. "All too often, we hear some variation of 'We just use Joe from down the hall to do our IT. He comes when he can.'"

## The Human Side of Technology

Any firm engaging in M&A activity of any kind should budget appropriately for the integration of the existing and new offices. That budget should include adequate resources, both time and dollars, for new tech integrations, upgrades, supplemental technology and training—even if the agency that's being acquired recently swapped out old technology.

When it comes to M&A activity in the title industry, even a discussion solely about tech systems and cybersecurity requires some discussion of the human side of the deal. After all, no matter how effective the security technology is, it's still only as good as the people using it, their understanding of its capabilities, and their willingness to buy in. That can buy-in be more difficult to come by if the agency being acquired has already undergone a recent technology upgrade initiated by the previous owner.

According to Stauffer, it's demoralizing to a newly acquired agency to learn that a new technology—especially a production system on which extensive amounts of time and money have been spent purchasing, training for and deploying—will shortly be cast aside for the acquiring firm's preferred system.

"It's not an easy conversation to have with the acquired agency's top people," he said. "And the front-line staff that has already gone through the growing pains of learning a whole new system only to learn they'll be doing it again? Also, fairly unpleasant."

Cantrell agreed.

"The first person you talk to after the deal, obviously, is the top person remaining. But the second? It has to be the ops person," he added. "That will be the one who's pretty nervous to meet you. It's the person with the scars from the last implementation, especially if they recently did a swap-out. And it won't be fun for you, either. Who enjoys telling someone that 'We're going to be changing everything, so your life will be hell for a little while?'"

Of course, he noted there are occasionally conversations leading to a "wave of relief" when both people in the conversation realize their systems are truly compatible.

When it becomes apparent that the acquired agency's technology simply won't suffice for the future, Cantrell said you need to walk your staff through the tech stack and ask them what they like about the current system and if they'd be open to something better.

"Don't underestimate the impact of major operational changes on morale—especially if the acquired business has just gone through a painful or lengthy implementation period," Cantrell added. "Sometimes the greater good might be better served by easing into wholesale changes.

Cybersecurity, on the other hand, is no place to save a buck or apply patchwork solutions. While there may be some ways to account for offices in different markets or with different functions, protecting your NPI (including the NPI the acquiring owner has just inherited) and your ability to access that NPI demands a global, strategic and systemic plan, with consistent monitoring and updating. It has become clear in recent months that cybercriminals are well aware of the value of the information within a title company's possession. And while even the most sophisticated and well-funded cyber defense strategies can be compromised occasionally, the fact is, the criminal element prefers the easy score. Hardening yourself as a target can be a tremendous deterrent, even to professionals. Chances are that handing the IT/cybersecurity responsibilities to a part-timer or a staffer who already has another job description will not be enough. So be certain to budget for qualified, full-time professionals or a reputable third-party provider to stand watch continuously—not just on a one-time basis.

Finally, despite their best efforts, acquiring firms will always lose some employees from the acquired business post-acquisition. While that can't be completely avoided, another concern is that those employees—especially if they are the operations people—will wait a few months, then take their previous employer's biggest clients with them to a new firm. To some extent, this can be limited by installing data loss prevention (DLP) mechanisms to monitor such activity. Simultaneously, the acquiring agent should be sure that new employment contracts are quickly put into place for employees from the acquired firm that have clear non-compete provisions.

An active M&A strategy can be a robust growth accelerator for a title agency flush with cash seeking to capture market share—especially in a competitive purchase market. It's always crucial to undertake adequate due diligence before making the leap. And it's especially important that the agency making the acquisition has a fully planned and carefully considered technology and cybersecurity strategy in place as well.



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# How to Get Employer Tax Credits for Providing Paid Leave for COVID Vaccines

The American Rescue Plan Act of 2021 (ARP) allows small and midsize employers, and certain governmental employers, to claim refundable tax credits that reimburse them for the cost of providing paid sick and family leave to their employees due to COVID-19. This includes leave taken by employees to receive or recover from COVID-19 vaccinations. The ARP tax credits are available to eligible employers that pay sick and family leave for leave from April 1, 2021, through Sept. 30, 2021.

In July, the IRS [announced](#) employers can claim credits for providing leave to employees to accompany a family or household member or certain other individuals to obtain immunization relating to COVID-19 or to care for a family or household member or certain other individuals recovering from the immunization.

Here are some basic facts about the employers eligible for the tax credits and how these employers may claim the credit for leave paid to employees who take leave to receive or recover from COVID-19 vaccinations.

## Eligible employers

An eligible employer is any business, including a tax-exempt organization, with fewer than 500 employees. An eligible employer also includes a governmental employer, other than the federal government and any agency or instrumentality of the federal government that is not an organization described in section 501(c)(1) of the Internal Revenue Code. Self-employed individuals are eligible for similar tax credits.

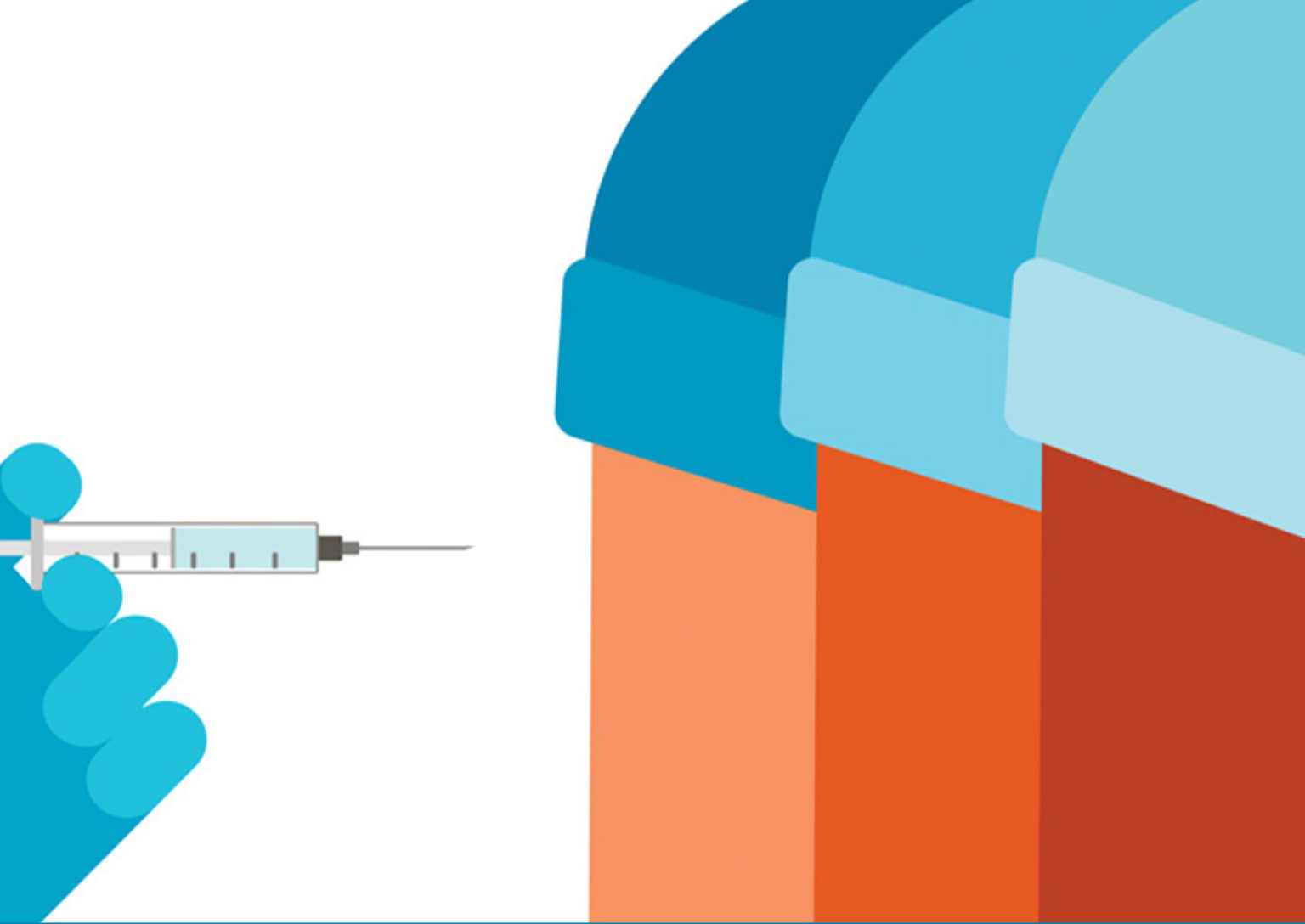
## Paid sick and family leave for which tax credits can be claimed

Eligible employers are entitled to tax credits for wages paid for leave taken by employees who are not able to work or telework due to reasons related to COVID-19, including leave taken to receive COVID-19 vaccinations or to recover from any injury, disability, illness or condition related to the vaccinations. These tax credits are available for wages paid for leave from April 1, 2021, through September 30, 2021.

## The amount of the tax credits and how they are calculated

The paid leave credits under the ARP are tax credits against the employer's share of the Medicare tax. The tax credits are refundable, which means that the employer is entitled to payment of the full amount of the credits if it exceeds the employer's share of the Medicare tax.

The tax credit for paid sick leave wages is equal to the sick leave wages paid for COVID-19 related reasons for up to two weeks (80 hours), limited to \$511 per day and \$5,110 in the aggregate, at 100 percent of the employee's regular rate of pay. The tax credit for paid family leave wages is equal to the family leave wages paid for up to



12 weeks, limited to \$200 per day and \$12,000 in the aggregate, at 2/3rds of the employee's regular rate of pay. The amount of these tax credits is increased by allocable health plan expenses and contributions for certain collectively bargained benefits, as well as the employer's share of Social Security and Medicare taxes paid on the wages (up to the respective daily and total caps).

## Claiming the credit

Eligible employers may claim tax credits for sick and family leave paid to employees, including leave taken to receive or recover from COVID-19 vaccinations, for leave from April 1, 2021, through Sept. 30, 2021.

Eligible employers report their total paid sick and family leave wages (plus the eligible health plan expenses and collectively bargained contributions and the eligible employer's share of Social Security and Medicare taxes on the paid leave wages) for each quarter on their federal employment tax return, usually with [Form 941, Employer's Quarterly Federal Tax Return](#). Form 941 is used by most employers to report income tax and Social Security and Medicare taxes withheld from employee wages, as well as the employer's own share of Social Security and Medicare taxes.

In anticipation of claiming the credits on the [Form 941](#), eligible

employers can keep the federal employment taxes that they otherwise would have deposited, including federal income tax withheld from employees, the employees' share of Social Security and Medicare taxes and the eligible employer's share of Social Security and Medicare taxes with respect to all employees up to the amount of credit for which they are eligible. The [Form 941 instructions](#) explain how to reflect the reduced liabilities for the quarter related to the deposit schedule.

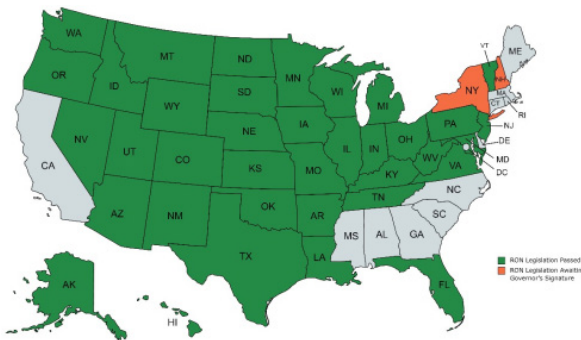
If an eligible employer does not have enough federal employment taxes set aside for deposit to cover amounts provided as paid sick and family leave wages (plus the eligible health plan expenses and collectively bargained contributions and the eligible employer's share of Social Security and Medicare taxes on the paid leave wages), the eligible employer may request an advance of the credits by filing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#). The eligible employer will account for the amounts received as an advance when it files its Form 941, Employer's Quarterly Federal Tax Return, for the relevant quarter.

Self-employed individuals may claim comparable tax credits on their individual [Form 1040, U.S. Individual Income Tax Return](#).

# Consumers Call Remote Online Notarization Process Safe, Secure

An overwhelming majority of consumers who used remote online notarization (RON) technology to complete their real estate transaction described the process as secure and convenient, and made the possibility of purchasing a home a reality.

According to a survey issued by ALTA member company Champion Title, 97% of consumers who closed on transactions in Virginia using RON said the process was safe and secure. Additionally, 95% said they would recommend the RON process to others. Nearly 350 consumers participated in the survey.



“Since the onset of the pandemic, businesses have been forced to rapidly adapt to a new normal, and the real estate industry is no exception,” said ALTA CEO Diane Tomb. “Remote online notarization has been one of the title industry’s most important tools in this process.”

The digital closing process provided convenience for many consumers who wouldn’t have been able to close in person due to various reasons, including health issues, being out of town, serving in the military or having to work or find a babysitter.

What some consumers said about the RON process:

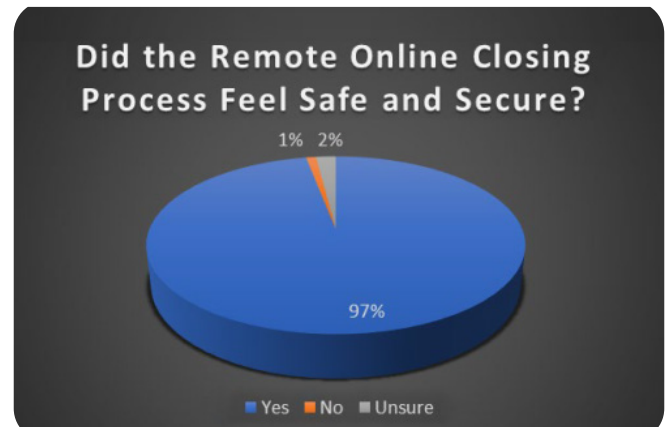
- I am stationed overseas in South Korea. My closing happened nearly 7,000 air miles away and 13 time zones different. Closing on the house would have been impossible without this option. Our dream house would have slipped away from us had we not been able to execute the buy remotely.
- It allows for people with disabilities, autoimmune disorders and those without access to transportation to easily close. It’s a more inclusive and accessible option.
- For a family with three children, the remote process made it so much easier for us. We didn’t have to arrange for a sitter, get all the kids ready, take them to a sitter, etc. If the kids were in school, it wouldn’t be a problem but with being in a time of virtual learning, the remote process took a lot of stress off our shoulders.



- We had already moved across country. Remote closing saved us from flying back for one hour of signing papers. It was also much more convenient than manually signing all the papers in a real estate transaction.
- It allowed me to physically remain at work but take a break to take care of my closing. Minimal disruption of my workday, no dealing with commuter traffic, no finding/paying for parking in an unfamiliar location, and then having to go back to work.

Of those surveyed, 79% would support legislation providing nationwide access to RON. While Virginia is one of 38 states that have enacted RON legislation, ALTA continues to support the federal bipartisan Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2021. The bill has been reintroduced in both the U.S. Senate and House of Representatives and allows for the immediate nationwide use of RON. The legislation provides certainty for interstate recognition of RON and establishes minimum standards to ensure strong nationwide consumer protections. Reps. Madeleine Dean (D-Pa.) and Kelly Armstrong (R-N.D.) have introduced the bill in the House, while Sens. Mark Warner (D-Va.) and Kevin Cramer (R-N.D.) have introduced a companion bill in the Senate.

“All Americans deserve the same opportunity to close their transaction safely and securely through a remote process,” Tomb said. “This is why Congress must pass the SECURE Notarization Act.”



# MOMENTUM **REFRAMED**

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Almost two years ago, we sought out to become the premier title services company. We knew in order to achieve that goal we needed to make a few changes. We focused on finding opportunities to improve the way we serve you. Better tech integrations, strategic acquisitions and improved search capabilities. And we took the necessary steps to make it easier for our partners to do business with us. Since then, those steps have transformed into strides and we are using the momentum we've gained to continue moving forward. Count on us to keep pushing ourselves so we can succeed together.

**Move forward with us. Learn more at [stewart.com/tn1](https://stewart.com/tn1).**



## Mortgage Fraud Increases as Market Shifts to Purchases

A shift to a purchase-dominated origination market from strong refinance business has pushed fraud risk to its highest level since early 2019, according to CoreLogic's latest report.

The probability of application fraud jumped 10.5% during the second quarter compared to the same period a year ago. The year-over-year increase is 37.2% annually. The index is a tad higher than it was in Q2 2019, which was 131. At the height of the pandemic refi boom in Q2 2020, it had dropped to 96 due to the influx of low-risk rate/term refinances. The rise back to 132 for Q2 2021 is on the historically high end of the index, but CoreLogic reported that it "is not cause for great concern."

The report said the shift in volume toward purchase loans is reflected in the increased risk indicated by the national index. According to the latest ICE Mortgage Technology's latest Origination Insight Report (OIR), purchases

### Highest Fraud Risk Metros

CBSA NAME	POPULATION*	Q2 2021 FRAUD RISK RANK	Q1 2021 FRAUD RISK INDEX	Q2 2021 FRAUD RISK INDEX	QUARTER OVER QUARTER, Q3 2020 TO Q4 2021
Las Vegas-Henderson-Paradise, NV	2,315,963	1	216	251	17%
Miami-Fort Lauderdale-Pompano Beach, FL	6,173,008	2	207	235	13%
Poughkeepsie-Newburgh-Middletown, NY	678,527	3	201	206	2%
Tampa-St. Petersburg-Clearwater, FL	3,243,963	4	169	191	13%
San Jose-Sunnyvale-Santa Clara, CA	1,971,160	5	151	189	25%
New York-Newark-Jersey City, NY-NJ-PA	19,124,359	6	166	186	12%
Orlando-Kissimmee-Sanford, FL	2,639,374	7	168	181	8%
Cape Coral-Fort Myers, FL	790,767	8	157	180	14%
North Port-Sarasota-Bradenton, FL	854,684	9	163	178	9%
Los Angeles-Long Beach-Anaheim, CA	13,109,903	10	162	176	8%
San Francisco-Oakland-Berkeley, CA	4,696,902	11	143	171	20%
McAllen-Edinburg-Mission, TX	875,200	12	159	169	6%
Columbia, SC	847,397	13	124	166	35%
Bridgeport-Stamford-Norwalk, CT	942,426	14	126	160	27%
Lakeland-Winter Haven, FL	744,552	15	163	158	-3%

represented a higher percentage of closings than refinances for the first time since December 2019. According to the report, purchases rose to 51% of closed mortgage loans in June, up from 47% in the month prior. Conversely, refinances represented 48% of closed loans, down from 52% the month prior. The

remaining 1% of closed loans were for other purposes. One area to watch is occupancy fraud, according to the report. As the GSEs limit financing availability for non-primary occupancy, it seems quite likely to increase motivation for occupancy misrepresentation, already one of the most common mortgage fraud risks.

## CFPB Issues Rule for How 2021 Juneteenth Holiday Impacts Closings

The Consumer Financial Protection Bureau (CFPB) on Aug. 5 [released](#) an interpretive rule to assist the industry in determining whether to treat June 19, 2021, as a federal holiday or a business day for the purposes of compliance with certain time-sensitive borrower protections.

Because the Juneteenth National Independence Day Act was signed into law two days before the newly created holiday on June 19 (which was a Saturday), it created regulatory compliance questions regarding certain timing requirements for closings.

Per the three-day advanced disclosure rule under the TILA-RESPA Integrated Disclosure rule (TRID) and the right of rescission rule under the Truth in Lending Act (TILA), federal holidays are not typically treated as a business day for the purposes of counting those periods. However, the late creation of the holiday upended much of those calculations. Under the interpretive rule, to determine whether June 19, 2021, counts as a business day or federal holiday depends on when the relevant time period began. If the relevant time period began:

- on or before June 17, 2021, then June 19 was a business day.
- after June 17, 2021, then June 19 was a federal holiday.

Additionally, the interpretive rule explains that creditors are not prohibited from providing longer time periods than required, so if a time period began on, or prior to, June 17, 2021, creditors could still treat June 19, 2021, as a federal holiday.

## First American Settles Alleged Anti-inducement Violation With California Regulator

First American Title Co. agreed to pay \$1 million after a California Department of Insurance (CDI) investigation alleged that one of its former title marketing representatives violated the state's law anti-inducement laws.

The department's investigation alleged that Eugene Blecker, a former First American marketing representative in northern Los Angeles County, violated anti-inducement laws by providing illegal benefits to real estate agents. Blecker allegedly provided custom video marketing, a tour bus caravan to bring agents to view and promote listings,



social media training and sales coaching.

“First American Title Company fully cooperated with the California Department of Insurance investigation of a former employee of the company,” First American said in a statement. “We’re pleased to resolve this matter with the California Department of Insurance and remain committed to compliance with Department of Insurance requirements.”

The investigation found that Bleecker managed a networking group of about 600 real estate agents called the Advisory Group Real Estate Network. According to the CDI news release, “First American encouraged Bleecker’s involvement with the Advisory Group despite internal guidelines for complying with anti-inducement laws, such as avoiding assisting others with marketing services or methods of growing their business.”

CDI Insurance Commissioner Ricardo Lara said the penalty should serve as a warning to companies that they are accountable for their employees’ actions that could potentially harm consumers.

The agreement with First American includes \$185,000 to reimburse the department for its investigative and legal costs. The department’s action against Bleecker’s individual license to act as a title marketing representative remains pending.

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## Stewart to Acquire Informative Research for \$192M

Stewart Information Services Corp. signed an agreement to acquire Informative Research (IR) for \$192 million.

IR provides credit, consumer and real estate data and technology services through its proprietary platform to more than 3,000 customers.

The transaction is expected to close following the appropriate regulatory review. IR will continue operating as a standalone company.

“Stewart continues to invest in the creation of an end-to-end, customer-focused real estate services and technology platform,” said Fred Eppinger, Stewart’s chief executive officer. “By

bringing IR into the Stewart family of companies, we further reflect that commitment and advance our data and analytics capabilities. I’m excited about the possibilities our service platform offers as we add IR to Cloudvirga, Signature Closers and NotaryCam as well as our existing appraisal and title capabilities to provide customers with superior performance and ease of use across the transaction lifecycle.”

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## Futura Title & Escrow Expands Alliance Title Brand in Idaho

Alliance Title & Escrow LLC recently acquired Boundary Abstract Co. in Bonners Ferry, Idaho. Alliance Title is part of the Futura Title & Escrow Family of Companies.

Larry Matney, CEO of Futura Title & Escrow, said Boundary Abstract Manager Sharlene Delaney, and her staff will join Alliance Title. “We admire their commitment to customers and the community, and we look forward to continuing to support their efforts,” Matney added. “Boundary Abstract will rebrand to Alliance Title & Escrow, and we couldn’t be more pleased about gaining Sharlene and her team of local experts.”

Headquartered in Idaho, Futura and its companies operate 75 offices covering 63 counties throughout Idaho, Oregon, and parts of Montana, Washington and Wyoming. In addition to Alliance Title & Escrow, Futura also operates AmeriTitle, Pacific Alliance Title and Kittitas Title & Escrow.

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## Several ALTA Member Companies Make Inc. 5000 List

Strong origination volume last year helped several companies in the title and settlement industry make the Inc. 5000 [list](#) in 2021.

The list represents a look at the most successful companies within the American economy’s most dynamic segment—its independent small businesses.

Here are the ALTA member companies

that made the list:

- **Priority Title & Escrow** (Virginia Beach, Va.): Ranked 793; 617% three-year growth
- **Signature Closers** (Upper Arlington, Ohio): Ranked 1,085; 448% three-year growth
- **ROC Title** (Laguna Niguel, Calif.): Ranked 1,244; 387% three year-growth
- **AccuTitle** (Ship Bottom, N.J.): Ranked 1,575; 299% three-year growth
- **World Wide Land Transfer** (Trevese, Pa.): Ranked 1,653; 278% three-year growth
- **PropLogix** (Sarasota, Fla.): Ranked 1,733; 265% three-year growth
- **Escrow Options Group** (Rancho Cucamonga, Calif.): Ranked 2,223; 192% three-year growth
- **TitleSmart** (White Bear Lake, Minn.): Ranked 2,975; 129% three-year growth
- **Skyline Lien Search** (Miami, Fla.): Ranked 3,795; 86% three-year growth
- **DocMagic** (Torrance, Calif.): Ranked 4,272; 67% three-year growth
- **Nationwide Title Clearing** (Palm Harbor, Fla.): Ranked 4,393; 63% three-year growth
- **Capstone Title** (Austin, Texas): Ranked 4,462; 61% three-year growth
- **Foundation Escrow** (San Diego, Calif.): Ranked 4,561; 57% three-year growth
- **Ohio Real Title Agency** (Cleveland, Ohio): Ranked 4,572; 57% three-year growth

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## Core Title Services Can Facilitate Cryptocurrency Transactions

New York-based Core Title Services can now accept various cryptocurrencies for commercial and residential real estate purchases.

The title company uses BitPay, a provider of cryptocurrency payment services, which converts the buyer’s digital assets into U.S. dollars. BitPay then sends the funds to Core Title Services and the seller if they choose.

“We’re thrilled to be among the first title companies in our area to be able

to do this for buyers and sellers,” said Andrew Zankel, president of Core Title Services. “It’s an exciting time because cryptocurrency will certainly be part of the future, and we want to be part of that for our customers.”

Many of the earliest adopters of Bitcoin, who profited most during the recent boom, are now searching for ways to diversify their holdings. While it has been much publicized how the value of Bitcoin has exploded over the last decade—a single coin was worth more than \$60,000 briefly in April—interest in investing in various forms of cryptocurrency has spiked over the last couple of years. Bitcoin traded around \$47,800 as of Aug. 25.

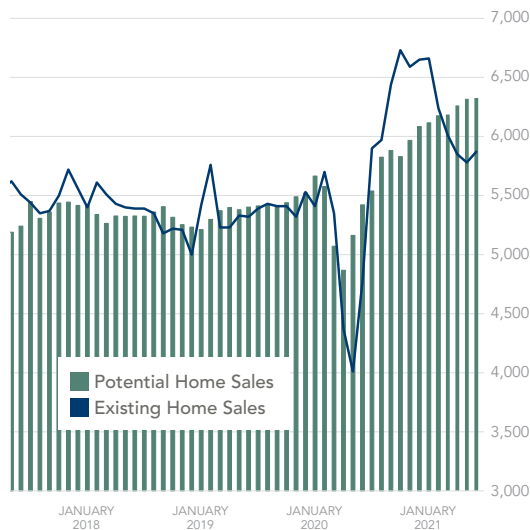
“There are a lot of tech-savvy people out there who have a sizable portion of their net worth in Bitcoin and other cryptocurrencies,” Zankel said. “As they look to purchase homes or add to their real estate portfolio, the ability to pay for property in digital assets is a logical request.”

### Recent Integrations

- **RamQuest’s Closing Market** digital network integrated with **United Tax Services**. Closing Market is an application-to-application interface that connects diverse systems and enables each participant to work from their own software. United Tax Services is a provider of property tax services.
- **First American Docutech** integrated its loan document generation technology and e-signature solution with **SimpleNexus’** platform. Lenders using SimpleNexus and First American Docutech can now provide borrowers the ability to e-sign initial mortgage disclosures through a single sign-on.
- **Wolters Kluwer Compliance Solutions** integrated its ClosingCenter with **ICE Mortgage Technology**. With this integration, Encompass loan information from the ICE Mortgage Technology platform is delivered to the ClosingCenter platform.

## Housing Market Potential

Existing and Potential Home Sales\* (in Millions, Seasonally Adjusted Annualized Rate)



**5.87** SAAR  
Existing Home Sales

**6.33** SAAR  
Potential Home Sales

**-7.2%**  
Market Performance Gap

\*Potential home sales measures what a healthy market level of home sales should be based on the economic, demographic and housing market environments.

## National Consumer House-Buying Power

How much home one can afford to buy given the average income and the prevailing mortgage rate

June 2021

**\$508,290**  
House-Buying Power

**+6.8%**  
Year-Over-Year

## Where House-Buying Power is Strongest

Top States and Markets

- |  |  |
|--|--|
| <b>1</b> New Jersey<br><b>\$717,743</b>    | <b>1</b> San Jose, CA<br><b>\$1,075,223</b>    |
| <b>2</b> Maryland<br><b>\$692,618</b>      | <b>2</b> San Francisco, CA<br><b>\$985,792</b> |
| <b>3</b> Hawaii<br><b>\$680,345</b>        | <b>3</b> Washington, DC<br><b>\$882,890</b>    |
| <b>4</b> Massachusetts<br><b>\$679,249</b> | <b>4</b> Boston, MA<br><b>\$775,759</b>        |
| <b>5</b> California<br><b>\$651,878</b>    | <b>5</b> San Diego, CA<br><b>\$692,411</b>     |

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## North American Title Names Underwriting Counsel for Mountain Region



James Rogers

North American Title Insurance Co. (NATIC) has named James Rogers as underwriting counsel for the company's Mountain Region. In this role, Rogers assists with underwriting decisions pertinent to residential and commercial properties in Arizona, Colorado, Utah and Wyoming, as well as expansion into new states in NATIC's Midwest and Western regions. Rogers brings to NATIC nearly 20 years of transactional legal experience with emphasis on real estate transactions, including title insurance, title opinion rendering, survey review and closing. Prior to joining NATIC, he served as senior manager of collateral and corporate attorney for a national cooperative bank serving rural America.

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## Attorneys' Title Guaranty Fund Elects New Board Chair

Attorneys' Title Guaranty Fund Inc. recently elected Steve Norgaard as chair of its board of directors. He first became an ATG agent in 1995 and was elected to the ATG board of directors in 2011. Norgaard's law firm, Steven K. Norgaard PC, represents a broad range of individual and corporate clients in transactional, taxation, and investment-related matters focusing primarily on real estate, estate planning and general business matters. Prior to starting his own law firm in 1994, Norgaard practiced with McDermott, Will & Emery's Chicago office in the transactional and taxation departments.

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## Boston National Title Bolsters Exec Team in Austin Region

Boston National Title of Texas (BNT) recently named Monica Middleton as executive vice president of the Austin region. She will work with BNT of Texas' escrow officers and salespeople and focus on expanding the company's footprint in Central Texas. Middleton has more than 30 years of industry experience, previously serving as president of Capital Title's Austin division.

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## NATIC Appoints Associate National Underwriting and Expansion Counsel

North American Title Insurance Co. (NATIC) has named Sheila Thiele as associate national underwriting and expansion counsel. In this role, Thiele assists NATIC/Doma's national underwriting and state expansion team with underwriting, regulatory and compliance matters for the company's national affiliated title agencies. Thiele, who has 15 years of legal experience, most recently served as in-house underwriting counsel for a national title insurance company, specializing in real estate owned (REO) foreclosure sales, residential refinance, reverse mortgages and commercial transactions.

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## WFG Appoints Underwriters in Michigan

WFG National Title Insurance Co. (WFG) announced the addition of its two newest underwriters in Michigan. Rachel Richardson and Tory Vincent will both serve as Michigan state counsel and national agency counsel.

Richardson comes to WFG after seven years on the legal team at Amrock. Most recently, she served as its associate corporate counsel, handling the full scope of pre-closing and curative underwriting issues for one of the nation's largest title agencies.

Vincent also comes to WFG from Amrock, where she concluded eight years on its legal team as associate corporate counsel, also working to resolve pre-closing and curative issues.

### Need to Hire? Utilize ALTA's Sample Job Descriptions and Advertisements

Need to add to your staff but don't have time to develop job descriptions and summaries. ALTA provides information for more than 30 positions in its Human Resources Library. The descriptions include job summaries, as well as suggested duties and responsibilities, knowledge and skills, and other information. Check out what's available in the library at [alta.org/human-resources](https://alta.org/human-resources).



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SOMEWHERE IS TO DECIDE YOU’RE NOT  
GOING TO STAY WHERE YOU ARE.”**

*- J.P. Morgan*

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## Reflecting and Moving Forward

### WHEN I TOOK OVER AS PRESIDENT OF ALTA IN OCTOBER 2020,

we were still in the thick of the COVID-19 pandemic. Now, a year later, the country continues to grapple with variants and vaccinations.

Between a worldwide health pandemic and major weather events including wildfires and hurricanes, we're all dealing with a lot of stress. Meanwhile, we continue to handle historic order volume.

I'm incredibly proud of how the title insurance and settlement services industry overcame the challenges of 2020. Without your willingness to adapt and go to great lengths to close real estate transactions during a worldwide pandemic, our economy would not be where it is today. Just as you showed up for your customers, we also have seen you go the extra mile for your communities, neighbors and peers.

I want to extend my wholehearted thanks to those who served on ALTA's Engagement Groups over the past year. Volunteering your time, energy and talent—especially in the face of the obstacles we experienced—is no small feat. All of us at ALTA, from the Board of Governors to the staff, realize how thinly stretched you are. It means a great deal that you are spending some of your sliver of free time to give back to the industry.

Your commitment and enthusiasm in exemplifying ALTA's Our Values—We Lead, We Deliver, We Protect—is evident not only in your interactions with the Engagement Groups but also in the daily work of your career, company and industry. You are incredibly important to the association and to the industry. I also want to recognize those who will continue to serve on the important Engagement Groups for the next year. We have nearly 700 title professionals who are taking the baton and continuing the association's work.

Many people know I love to play tennis. Tennis players must learn to adapt their playing style to the surface they're playing on. Like tennis players, business leaders must be flexible. ALTA remains in great hands with Dan Wold set to serve as your next president. With nearly 30 years of title industry experience, he knows your business, your challenges and where we should be going to ensure future success. He's served on ALTA's RESPA and TRID taskforces, and is part of the association's Homeowner Outreach Program. I'll be proud to serve on his board as past president.

When we stand together, we ensure that ALTA will remain the strong voice of the title insurance and settlement services industry. United, we can do great things ... no matter the challenges!



**BILL BURDING NTP**  
ALTA president



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