

TITLE News

FEBRUARY 2023

AMERICAN LAND TITLE ASSOCIATION

Regulators Move to Give More Power to Employees

FTC Wants to Ban Non-competes,
While NY AG Focused on
No-poach Contracts



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TITLENews

The digital edition of **TITLENews** includes a webinar recording that discusses the importance of building a culture of ownership with your employees, which in turn can help drive results. This presentation will help you assess your “go-to” managerial or leadership style and reflect on how you can more effectively build an employee-forward culture.

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Optimize Your Business

ALTA'S BOARD OF GOVERNORS AND STAFF have been focused on helping our members and industry succeed in a changing market. This is why we develop strategic priorities every year. We've made it a priority to promote resources to help members run their businesses successfully, provide education and training to help members plan for a changing economic environment, and develop and deliver programming to help members attract talent, foster employee engagement and promote retention. Here's a look at just a few of the tools available to help your operation.



JEREMY YOHE
ALTA vice president of communications

Best Practices

New digital payment options, increasing fraud threats and new regulations and laws, as well as changes to business and market needs, led to recent updates to the ALTA Best Practices. The changes are focused on the continual improvement to operations and involve escrow accounting and privacy and information security programs to protect non-public information, as well as an overhaul to enhance the closing and settlement process.

- Title Insurance and Settlement Company Best Practice (Version 4.0)
- Assessment Procedures (Version 4.0)

Information Security

Information security and wire transfer fraud are critical topics for the title insurance and settlement industry. ALTA has developed some new tools to help members protect their systems, plan for a rapid response in case of an incident, and prepare their employees, clients and customers to be aware and vigilant.

- **Cyber System Overview:** Use this narrative to improve your understanding of a Cyber System Inventory, why it is important to cybersecurity efforts, and how to create and maintain your company's inventory.
- **Cyber System Inventory Workbook:** Use this model workbook to create and customize your company's inventory.
- **ALTA Business Impact Analysis:** Use this guide to examine your software applications, determine which resources are critical to your operation, and discover when to add resources to minimize the business impact of downtime.

Marketing Material

- Through the Homeowner Outreach Program, ALTA provides exclusive resources—including blogs, educational flyers, print and digital ads, infographics, posters and presentations—to help ALTA members explain title insurance and the closing process.
- ALTA also provides a social media marketing calendar that includes a full year of content members can use on social media to market their business. The calendar provides a month-by-month plan or can also be used à la carte.

In addition, there are several education opportunities, including the 2023 ALTA SPRINGBOARD in March and our free monthly ALTA Insights webinars. As you can see, there are lots of tools and resources to utilize. In addition, we're looking for help to tell the industry's story. Do you know an individual or organization who understands the benefits of title insurance and who would be willing to share their experiences? Send your suggestions to communications@alta.org.

ALTA Best Practices Webinar: Review of Changes and Impact on Your Operation

New digital payment options, increasing fraud threats and new regulations and laws, as well as changes to business and market needs, led to recent updates to the ALTA Best Practices. The changes are focused on the continual improvement to operations and primarily involve escrow accounting, and privacy and information security programs to protect non-public information, as well as an overhaul to enhance the closing and settlement process. Register for this SoftPro-sponsored webinar to get an overview of the changes, when the revisions will go into effect and the impact on certification.

Speakers

- Craig Haskins | Chief Operating Officer | Knight Barry Title Group
- Tara Smith | President, Agency Services | Stewart Title Guaranty Co.

When

- 1:00-2:00 p.m. ET, March 8

[Register Today.](#)

ALTA Asks FTC to Provide Clear Definition of a 'Junk Fee'

ALTA submitted a [letter](#) in response to the Federal Trade Commission's [advance notice of proposed rulemaking](#) (ANPR) to address certain deceptive or unfair acts or practices relating to fees.

In the ANPR, the FTC said junk fees frustrate consumers, erode trust, impair comparison shopping and facilitate inflation. The FTC said the term "junk fees" refers to unfair or deceptive fees that are charged for goods or services that provide little or no added value to the consumer, including goods or services that consumers would reasonably assume to be included within the overall advertised price.

The letter to the FTC is like the letter ALTA sent the CFPB last year. ALTA said the FTC's definition of a junk fee is too vague and subjective for the industry to follow. As written, it could be interpreted to include a host of legitimate and regulated fees for important and valued services. To help consumers and set standards for industry, it would be beneficial for the FTC to provide a robust set of clear examples of what would and would not fall under a "junk fee" definition. The FTC should consider a catch all exception for any fee that is already regulated by a state or the federal government, ALTA suggested.

"In the next step of the rulemaking process, the FTC should note that a fee is not necessarily a 'junk fee' just because it has different names in different parts of the country. In real estate closings, there are examples where the exact same service has a different name due to local custom and practice," ALTA's letter said. "Since the differently named fees are for a legitimate service, they should not be deemed a 'junk fee' merely due to a different naming convention at the local level."

The letter highlights the value the title insurance industry provides and the robust nature of the current regulatory framework. While ALTA shares the CFPB's desire to root out companies and practices that mislead consumers about their charges, the bureau would benefit from conducting a full Administrative Procedures Act rulemaking before taking action on any area of concern, including so-called junk fees.

"While ALTA supports the FTC's goals to root out practices that mislead consumers about their charges, we also strongly believe that the FTC should provide a specific and concise definition of a 'junk fee' in the next step of the rulemaking process," ALTA said. "Detailed guidance is important so industry has clear rules of the road and can set appropriate expectations for consumers."

ALTA 2023 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 2023, TIPAC raised \$141,650 from 60 people. In addition, \$124,000 from 16 companies has been pledged to the TIPAC Education Fund. Check out who has supported the industry at alta.org/tipac.



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<p>Active Membership <i>Calculate Your Dues Below</i></p> <p>Active membership is restricted to business entities that are legally qualified to engage in the business of land title evidencing as an abstractor, title insurance agent or title insurance underwriter. Active members may vote in Association elections and hold committee and elected positions.</p> <p>Emeritus Membership <i>Emeritus Membership Dues are \$115</i></p> <p>This class of membership is open to retired members of the title industry, provided that they are not eligible for any other type of membership.</p>	<p>Associate Membership <i>Associate Member dues are \$600</i></p> <p>Associate membership is reserved for those people or firms engaged in providing services to the land title industry. This includes a basic ALTA Marketplace profile.</p> <p>Marketplace Premier is \$400 additional ALTA Marketplace Premier allows you to add ads, videos, and references to your profile.</p> <p>Real Estate Attorney Membership <i>Real Estate Attorney dues are \$350</i></p> <p>The attorney membership is designed to specifically meet the needs of individual real estate attorneys, these individual attorneys do not primarily engage in the business of land title evidencing.</p>	<p>All Member Types</p> <p>Paying online today and your membership benefits will be available the next business day.</p> <p>In order to renew online you must log in as the primary contact for your company. If you are unsure if you are the primary contact or need help accessing your account, please contact the ALTA Membership Department at 800-787-2582 x223 or email membership@alta.org.</p> <p>TIAC Members Please Renew Here</p> <p>2023 Membership Certificate Download Here</p>

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The waiver is only applicable if your agency wrote title insurance on 50 or fewer transactions during the previous calendar year.

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3. On the next page, click Download This Certificate and it will automatically download.
4. If you would like to download the certificates for your subsidiaries, click View Children. Here, your subsidiaries will be listed and you may choose which certificate you would like to download.

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: 55
- Title Agents: 42
- New Associate Members: 1
- New Attorney Members: 7
- State With the Most, New Members: New Jersey with 10
- Total Members: 4,151



NEWS TO SHARE?
If you have information you'd like us to consider for TITLE News, send company announcements to communications@alta.org.

CALENDAR

2023 ALTA CONFERENCES

COMMERCIAL NETWORK
San Diego, Calif.
Feb. 15-17

ALTA SPRINGBOARD
St. Louis, Mo.
March 20-22

ALTA ADVOCACY SUMMIT
Washington, D.C.
May 8-10

STATE CONVENTIONS

UTAH
Springdale, Utah
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ALASKA
Girdwood, Alaska
Feb. 10-11

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An illustration featuring a man in a dark suit and red shoes running from left to right. He is pushing through several horizontal red caution tapes that are stretched across the scene. In the background, a large pair of green-handled scissors is positioned as if about to cut the tapes. The background consists of a light blue wall with white grid lines and hanging light fixtures. The overall style is flat and modern.

Regulators Move to Give More Power to Employees

FTC Proposes Rule to Ban Noncompete Clauses, While Another Title Company Settles 'No-poach' Allegations in NY

By Jeremy Yohe

Recent actions by federal and state regulators may give more power to employees to pursue better employment opportunities. The Federal Trade Commission (FTC) on Jan. 5 proposed a rule that would ban employers from imposing non-compete agreements with their workers. Meanwhile, the New York attorney general settled another allegation of “no-poach” agreements with a title insurance company.

The FTC is seeking public comment on the proposed rule, which is based on a preliminary finding that non-competes constitute “an unfair method of competition” in violation of Section 5 of the Federal Trade Commission Act.

Specifically, the FTC’s proposed rule would make it illegal for an employer to:

- Enter into or attempt to enter into a non-compete agreement with a worker.
- Maintain a non-compete agreement with a worker.
- Represent to a worker, under certain circumstances, that the worker is subject to a non-compete agreement.

“The freedom to change jobs is core to economic liberty and to a competitive, thriving economy,” said FTC Chair Lina M. Khan. “Noncompetes block workers from freely switching jobs, depriving them of higher wages and better working conditions, and depriving businesses of a talent pool that they need to build and expand. By ending this practice, the FTC’s proposed rule would promote greater dynamism, innovation and healthy competition.”

The proposed rule would apply to independent contractors and anyone who works for an employer, whether paid or unpaid. It would also require employers to rescind existing non-competes and actively inform workers they are no longer in effect.

The proposed rule would generally not apply to other types of employment restrictions, like non-disclosure agreements. However, other types of employment restrictions could be subject to the rule if they are so broad in scope that they function as non-competes.

In July 2021, President Biden issued an Executive Order titled “Promoting Competition in the American Economy,” directing the FTC to exercise its “statutory rulemaking authority under the Federal Trade Commission Act to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.”

The FTC said that non-competes are “a widespread and often exploitative practice that suppresses wages, hampers innovation, and blocks entrepreneurs from starting new businesses.”

The FTC’s proposed rule would require employers to rescind all existing non-compete provisions within 180 days of publication of the final rule, and to provide current and former employees notice of the rescission. If employers comply with these two requirements,

An estimated* **18%** of U.S. workers are covered by noncompetes.

That's 30 million people.

The FTC estimates that banning noncompetes may:

- ▶ Increase workers' earnings by nearly \$300 billion
- ▶ Save consumers up to \$148 billion on health costs each year
- ▶ Double the number of companies in the same industry founded by a former worker

Researchers estimate that banning noncompetes nationwide may close racial and gender wage gaps by 3.6-9.1%.**

The FTC invites comments on its preliminary proposal [ftc.gov/noncompetes](https://www.ftc.gov/noncompetes)

FEDERAL TRADE COMMISSION

*Source: Starr, Prescott & Bishara, Noncompete Agreements in the U.S. Labor Force (2021)
**Source: Johnson, Lovell & Lipsitz, The Labor Market Effects of Legal Restrictions on Worker Mobility (2020)

the rule would provide a safe harbor from enforcement. In addition, the proposed rule would exempt from its scope certain non-competes entered in connection with the sale of businesses. This exception also applies under California law, recognizing the need to protect the goodwill of a business.

The proposed rule would preempt all state and local rules inconsistent with its provisions, but not preempt laws

or regulations that provide greater protections. According to the law firm Gibson, Dunn & Crutcher LLP, the proposed rule would override existing non-compete requirements and practices in the vast majority of states.

The law firm Fisher & Phillips LLP believes the rule is likely to pass in some shape or form. Christine Wilson, the sole FTC commissioner opposed to the rule, also seems to believe the rule will pass. In her dissenting statement, she strongly encourages the submission of comments from “all interested stakeholders,” noting “this is likely the only opportunity for public input before the Commission issues a final rule.”

Cindy McGovern, CEO of Orange Leaf Consulting, sees the FTC’s proposed rule as an opportunity for employers to re-energize their teams.

“As a leader, the goal is to create an environment where people want to work, contribute, feel valued and their ideas are welcomed,” McGovern said. “While the world is not always an even playing field and sometimes money does talk, research shows that people leave because of management, not money. So, we have an opportunity to use this change to prompt more conversation about professional development and career paths and to proactively show our team members they are seen, heard, valued and cherished.”

Meanwhile, Sean Heather, the U.S. Chamber of Commerce’s senior vice president for international regulatory affairs and antitrust, said the FTC’s action to ban non-compete clauses in all employer contracts is “blatantly unlawful.”

“Since the agency’s creation over 100 years ago, Congress has never delegated the FTC anything close to the authority it would need to promulgate such a competition rule,” he said. “The chamber is confident that this unlawful action will not stand. Attempting to ban non-compete clauses in all employment circumstances overturns well-established state laws which have long governed their use and ignores the fact that, when appropriately used, non-compete agreements are an important tool in fostering innovation and preserving competition.”

A day before issuing the NPRM, the FTC **took legal** action against three companies and two individuals, forcing them to drop non-compete restrictions that they had imposed on thousands of workers. According to the complaints issued by the FTC, each of the companies and individuals illegally imposed non-compete restrictions on workers in positions ranging from low-wage security guards to manufacturing workers to engineers that barred them from seeking or accepting work with another employer or operating a competing business after they left the companies.

Practical Game Plan for Employers

Assuming the proposed rule becomes effective, the law firm Fisher & Phillips LLP provided the following tips to protect customer relationships, confidential information and trade secrets.

The proposed rule does not expressly ban non-disclosure and non-solicitation provisions, it will apply a functionality test that could invalidate such provisions if they are found to be de facto non-compete provisions. Carefully drafted non-solicitation, confidentiality and non-disclosure clauses should withstand such scrutiny, enabling employers to protect confidential information and customer relationships, as well as the poaching of employees by other employees, the law firm said. Additionally, employers could still rely on the federal Defend Trade Secrets Act and state trade secret statutes to protect trade secret information.

Employers should make sure they

utilize appropriate policies, procedures and training regarding the handling and use of confidential and trade secret information.

According to Fisher & Phillips, businesses should:

- Revisit their restrictive covenants—including non-solicitation and confidentiality provisions—to ensure they are reasonably tailored to protect legitimate interests. The day before it issued the NPRM, the FTC announced three consent orders forcing three employers to drop their non-competes against thousands of workers. Sounding a lot like the analysis in the NPRM, the consent orders found the employers’ use of non-competes was a method of unfair competition, and it required them to terminate the agreements and notify the employees who signed them. While the proposed rule is pending, there is no reason to believe the FTC will relent on its investigative

and enforcement efforts.

- Ask whether the non-competes your company uses are necessary to protect your legitimate interests. You should also consider whether you can protect your interests with a less burdensome covenant such as a properly tailored customer non-solicitation or confidentiality provision.
- Get your trade secrets house in order. This is perhaps more important now than ever. The FTC cites the availability of trade secret protection as a factor that mitigates the harm of abrogating non-competes. You should identify your trade secrets and put proper policies and procedures in place to protect them. Limit trade secret access only to those who need it, train employees how to handle trade secrets and protect against theft, and implement suitable technological controls.

"While the world is not always an even playing field and sometimes money does talk, research shows that people leave because of management, not money."



No-Poach Allegations

During the past three presidential administrations, “no-poach” agreements have been in the cross-hairs of the Antitrust Division of the Department of Justice. Using its power to enforce antitrust laws through criminal prosecutions, the Department of Justice indicted several individuals and companies alleged to have entered into “no-poach” agreements.

At the state level in December, Stewart Title Guaranty Co. agreed to pay \$2.5 million to settle allegations it entered into no-poach agreements with competitors in New York, according to the state’s office of the attorney general (OAG), led by AG Letitia James. The title company, which cooperated with the attorney general’s office, didn’t admit or deny the findings.

“Stewart enters into this assurance for the purpose of resolving the OAG investigation only, and this assurance does not create any rights for any third party,” the agreement stated.

No-poach agreements are agreements among two or more companies not to solicit, recruit or hire each other’s employees.

James has been targeting no-poach agreements. Her office has ended the use of “no-poach” agreements by other title companies including Old Republic Title Insurance Co., AmTrust and First Nationwide Title Agency. Old Republic Title Insurance Co. agreed to pay \$1 million to settle allegations, while AmTrust and First Nationwide paid \$1.25 million to settle their “no-poach” claims.

In addition to the fine, Stewart agreed to terminate any existing no-poach agreements and cooperate with the OAG’s ongoing investigations in the industry.

The investigation concluded that Stewart entered into no-poach agreements with other title insurance companies, and that these agreements effectively reduced career opportunities and wages for workers, according to the attorney general. The investigation did not

identify any procompetitive justifications for these agreements.

According to the Assurance of Discontinuance, for 10 years Stewart must:

- Notify the OAG if it learns of any violation or potential violation known to any officer, director, human resources manager or senior manager who supervises employee recruiting, solicitation or hiring efforts.
- Notify the OAG if it learns of any efforts by competitors to enter into or enforce a no-poach agreement
- Provide the OAG with a certification affirming its compliance with the requirements set forth in the order.

The company also must provide a compliance program to meet the obligations of the order.

“No-poach and wage-fixing agreements have increasingly become an area of focus for both state and federal enforcers in recent years,” wrote Adam C. Hemlock, an attorney with the law firm Weil Gotshal & Manges LLP. “A key milestone was in 2016, when the U.S. Department of Justice (DOJ) and Federal Trade Commission jointly issued their Antitrust Guidance for Human Resource Professionals, which warned employers about the anticompetitive risks associated with wage-fixing and no-poach agreements. High-profile settlements that resulted from state investigations of no-poach agreements, such as the New York Attorney General’s settlement with title insurance underwriters ... confirm that no-poach provisions will continue to be an area of focus at the state level as well.” ■



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

ALTA Decertifies Several 2006 Policy Forms



In line with prior guidance, ALTA decertified certain 2006 series policy forms effective Dec. 31, 2022.

As always, ALTA decertification establishes that the association no longer officially supports the forms, and will not update them. However, use of these forms by Policy Form Licensees (including title insurers and agents) will likely continue for some period of time. Decertification does not prohibit the continued use of any form. In addition, realizing that these forms will be seen in the market, ALTA will continue to make them available on the [ALTA website](#) in a “Decertified Basic Policies (12-31-2022) – 2006 Series” subsection of the policy forms page through at least the end of 2023.

The specific decertified policy forms include:

- ALTA Loan Policy – 6/17/2006
- ALTA Owner’s Policy – 6/17/2006
- ALTA ECRLP – AP – 4/2/15
- ALTA ECRLP – CA – 4/2/15
- ALTA Homeowner’s Policy – 12/2/13
- ALTA Residential Limited Coverage Junior Loan Policy – 8/1/12
- ALTA Residential Limited Coverage Mortgage Modification Policy – 12/1/14
- ALTA Short Form Expanded Coverage Residential Loan Policy - Assessments Priority -04/02/2015
- ALTA Short Form Expanded Coverage Residential Loan Policy - Current Assessments - 04/02/2015
- ALTA Short Form Residential Limited Coverage Junior Loan Policy - 04/02/2013
- ALTA Short Form Residential Loan Policy - 12/03/2012
- ALTA Short Form Residential Loan Policy - Current Violations - 04/02/2015
- ALTA Commitment for Title Insurance – 08/02/2016
- ALTA Short Form Commitment for an ALTA Short Form Residential Loan Policy – 12/01/2017

Specific 2006 Policy Forms that are NOT being decertified at this time include:

- ALTA Limited Pre-Foreclosure Policy – 12/3/12
- ALTA Limited Pre-Foreclosure Policy – Date Down Endorsement – 12/3/12
- ALTA U.S. Policy Form – 12/3/12

At a future date, Endorsements that are specific only to the 2006-series Policy Forms will be decertified, and Endorsements that are applicable to both 2006-series and 2021-series Policy Forms will be migrated to 2021 heading standards so the application to the 2021 forms will be obvious. The dates for these actions have not been established.

For any questions about which forms apply to which policy form series, please see the attached “*Endorsement Chart v 2.0 05-12-2022*” which is posted to the ALTA Policy Forms site and updated as needed.

Technical Corrections

Two technical corrections were issued Dec. 31, 2022, to existing policies, along with notice of one policy’s version control heading correction that does not require a technical correction since no substance of the Endorsement is being revised.

- **Technical Correction to “Expanded Coverage Residential Loan Policy – Current Assessments”:** Change the reference in Covered Risk 28.g. to reference the name of ALTA Endorsement 9.10 as follows:

[28. Unless stated to the contrary in Schedule B, the Company incorporates the following endorsements, as adopted by the American Land Title Association (ALTA) and authorized for use in the State as of the Date of Policy, into this policy by this reference as if these endorsements are attached to this policy:

- a. ALTA 4.1 Condominium—Current Assessments, if a condominium unit is referred to in the description of the Land;
- b. ALTA 5.1 Planned Unit Development—Current Assessments;
- c. ALTA 6.2 Variable Rate Mortgage;
- d. ALTA 6.2 Variable Rate Mortgage—Negative Amortization;
- e. ALTA 8.1 Environmental Protection Lien, subject to the State statutes, if any, identified in Schedule B specifically for this endorsement;
- f. ALTA 9.6.1 Private Rights—Current Assessments—Loan Policy; and
- g. ALTA 9.10 Restrictions, Encroachments, Minerals—Current **Assessments/Violations** - Loan Policy.]

- **Technical Correction to “Short Form Residential Loan Policy – Current Assessments”:** In the Addendum to the Policy, add “ALTA” before the name of the Policy that the Addendum applies to:

American Land Title Association Short Form Residential Loan Policy—Current Assessments [2021 v. 01.01 (12-31-2022)]

ADDENDUM
ALTA SHORT FORM RESIDENTIAL LOAN POLICY—CURRENT ASSESSMENTS
ONE-TO-FOUR FAMILY

Modification

- **Version Control Header Format Change – “Short Form Residential Loan Policy – Assessments Priority”:** Modified the prior 11/18/2021 technical correction versioning date to match the 2021 style from the ALTA Forms Style Guide. This does not represent a technical correction, as no substance is being changed in the policy:

American Land Title Association Short Form Residential Loan Policy—Assessments Priority [2021 v. 01.01 (A-07-01-2021-TC-11-18-2021)]

ALTA SHORT FORM RESIDENTIAL LOAN POLICY—ASSESSMENTS PRIORITY
ONE-TO-FOUR FAMILY
issued by
BLANK TITLE INSURANCE COMPANY

Policy forms, including technical corrections, are available [here](#).



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Unsettled Commercial Markets Dissipating in 2023, MBA Reports

COMMERCIAL AND MULTIFAMILY MORTGAGE ORIGINATORS are experiencing an unsettled market for borrowing and lending but anticipate those conditions will slowly stabilize over the course of 2023. That is according to the Mortgage Bankers Association's (MBA) 2023 Commercial Real Estate Finance (CREF) Outlook Survey, which polled the leaders of the top commercial and multifamily mortgage finance firms for their outlook for the year ahead.

"Commercial real estate markets are entering 2023 amid a great deal of uncertainty and, as a result, a significant slowdown in activity," said Jamie Woodwell, MBA's Head of Commercial Real Estate Research. "Leaders of top commercial real estate finance firms believe that overall uncertainty will dissipate over the course of the year, but with a host of factors that will drag – rather than boost – the markets in 2023."

Added Woodwell, "Among the factors most viewed as negative by CRE leaders are office market fundamentals, short-term interest rates, inflation, long-term interest rates, the broader economy, and adjustable rate and short-term loans maturing in today's market. Industrial and apartment market fundamentals and changes in the severity of the COVID-19 pandemic are the only factors seen by more leaders as positive than negative for the market."

Highlights of MBA's 2023 CREF Outlook Survey include:

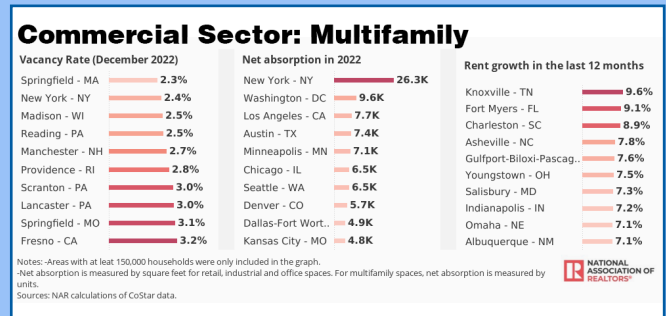
- Among property types, the office market is viewed as most negatively affecting today's borrowing and lending markets while a majority of respondents view the industrial market outlook as having positive impacts.
- Cap rates and valuations, base interest rates, and mortgage spreads are all viewed as having negative impacts on today's financing activity.
- Originators expect the market to stabilize over the course of 2023.
- In 2023, lenders are expected to have a (slightly) stronger appetite to lend than borrowers will have to borrow.
- Borrowing and lending volumes are expected to decline in 2023.
- No capital sources are broadly expected to see increases.
- There are more deals looking for debt than there is debt looking for deals.
- Across a variety of factors affecting the markets, more are seen as negative than positive for 2023.

A report from the National Association of Realtors said the commercial market in 2023 will be challenging, with higher vacancy rates in the office and multifamily sectors.

Due to rising borrowing costs, people may need to rent for a longer period keeping strong demand for apartment buildings. While the U.S. may skirt recession, the multifamily sector will likely regain momentum later this year and perform better than pre-pandemic.

The future of office space is ambiguous. COVID-19 has already disrupted the "traditional office" work environment. Hybrid work is now a reality for many people, and this trend only goes one way, just like e-commerce changed the "traditional retail" sector. Thus, 2023 will be another

challenging year for the office sector as this sector will continue to change to improve the occupant experience and attract more employees to return to the office. But, this may be even more difficult with older office spaces lacking modern amenities. Vacancy rates may drop even further for these office spaces.



Thanks to the rise of e-commerce during the pandemic, industrial real estate outperformed in the last couple of years. Big online retailers needed warehouses to store their products, boosting the demand for industrial spaces. Even though demand for industrial space cooled off in 2022, the industrial sector will continue to be one of the bright spots of commercial real estate in 2023. Despite the slowdown, vacancy rates will remain low, and rent growth will increase by a double-digit number due to low supply in the industrial sector.

The retail sector is expected to remain strong and perform better than pre-pandemic levels. With inflation moving down and interest rates to stabilize later this year, consumer spending power will be back this year. Specifically, growth in the brick-and-mortar stores will be driven mainly by smaller shops such as neighborhood centers. The trend is clear. Due to remote-work policies, neighborhood stores are on the rise, and this trend will continue this year. Consumers like to shop locally as these neighborhood stores offer convenience and personal interaction.



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THE DOCKET

Illinois Court Holds Title Claims Exempt From Complete Defense Rule

CITATION: *Findlay v. Chicago Title Ins. Co.*, 2022 IL App (1st) 210889 (2022)

FACTS: The matter involved a 10-lot residential vacation community located near the shore of Lake Michigan. Lots 1 through 7 possessed their own designated private beach areas, while Lots 8 through 10 were landlocked without private beach access. Originally, the community contained a beach easement on the edge of Lot 5 that allowed access to Lake Michigan and the beach area (the Beach Easement), which was used by the owners of Lots 8 through 10 to obtain beach access. In the 1990s, the community erected a gate near the easement access point which, when closed, only allowed the landlocked owners to access the Beach Easement by cutting across a portion of Lot 5.

In 2007, James Findlay purchased Lot 5, and post-purchase began objecting to the other lot owners cutting across his property to access the Beach Easement. This led to a lawsuit between Findlay and the owners of Lots 8 and 9 (Lot Owners), with the Lot Owners seeking a declaratory judgment that an implied ingress-egress easement existed on Lot 5. Both Findlay and the Lot Owners possessed title insurance through Chicago Title Insurance Co.

Chicago Title provided Findlay with counsel, but only agreed to defend and indemnify him on two of the Lot Owners' four total counts. At the same time Chicago Title accepted the Lot Owners' tender and paid for counsel, thus footing the bill for the attorneys of both parties. During the litigation process, Findlay fired his appointed counsel and retained new counsel without Chicago Title's approval or consent. Ultimately, Findlay prevailed in the lower court, which held that no implied easement existed.

Following the conclusion of this first suit, Findlay then sued Chicago Title, alleging it had breached its contractual duty to defend by: (1) creating a conflict of interest by paying for both his attorney and the Lot Owners' attorney; (2) failing to provide coverage for all four counts of the Lot Owners' action; and (3) failing to approve his retention of a new replacement attorney. Findlay ultimately failed on each of these claims before the trial court, appealing the dismissal of his action to the court.

HOLDING: On appeal, the Appellate Court of Illinois, First Division first considered Findlay's conflict of interest claim, noting it was well established that "not every potential conflict of interest automatically triggers the right to independent counsel at [an] insurer's expense" and that the "mere fact that opposing parties are insured by the same insurance provider does not necessarily entitle the insured to paid-for independent counsel." Based on this precedent,

the court thus held that Chicago Title paying for both parties' attorneys did not create such a conflict, as there was no evidence in the record demonstrating that Chicago Title had directed either counsel how to litigate the case.

The court then turned to the more interesting and salient issue: Findlay's contention that by refusing to defend and indemnify all four counts of the Lot Owners' action, Chicago Title had breached Illinois' "complete defense rule," which generally imposes an obligation upon an insurer "to provide a complete defense in a suit or action against its insured even if only one or some of the claims are potentially covered." While the court acknowledged that this doctrine was valid, it held that "the complete defense rule does not apply in the context of title insurance," citing as examples opinions from other jurisdictions in Wisconsin, Pennsylvania, Colorado, and Massachusetts. The court explained that this exception derives from several unique characteristics of title insurance, namely that it acts in a "retrospective rather than prospective" manner by protecting against defects arising prior to the issuance of coverage, and that its claims are easily bifurcated. Thus, the court ultimately held "that the complete defense rule does not apply in the context of title insurance."

Finally, the court found that Findlay's remaining claim was barred by title policy Condition 5(a), which provided that Chicago Title had "the right to select counsel of its choice (subject to the right of [Plaintiff] to object for reasonable cause) [and that Chicago Title] shall not be liable for and will not pay the fees of any other counsel." As Findlay had never provided any "reasonable cause" to object to his original attorney's representation, this claim also failed.

IMPORTANCE TO THE TITLE INDUSTRY:

This decision is a continuation of a growing trend of jurisdictions wholly exempting title insurance from the "complete defense rule" or any other similar state analog using a different name. When faced with such a claim, this opinion, used in conjunction with the various holdings of other states summarized within, can potentially form the basis of a good-faith motion to dismiss or motion for summary judgment. It is also instructive as to underwriters' right to retain counsel per its policies.

MICHAEL R. O'DONNELL is co-managing partner of the law firm *Riker Danzig LLP*. **JAMES MAZEWSKI** is an associate with the firm. O'Donnell can be reached at modonnell@riker.com and Mazewski can be reached at jmazewski@riker.com.

Analysis of Your Current Banking Relationship

Evolving Market May Require New Tools

On a semi-regular basis, it's important to analyze current banking relationships to uncover solutions you may otherwise be unaware of that could be beneficial for your business.

Your banker should understand and assist in fiscally managing your business with a proactive rather than reactive approach.

A bank should have a differentiated approach to doing business with title companies and qualified intermediaries. Your banking partner should be able to customize proposals systematically and logically once they know:

1. The types of accounts you currently use.
2. How funds flow in and out of your accounts.
3. The types of treasury management and online services used by your company to protect against the threat of fraud.

These probing questions will assist your banker in potentially reducing and eliminating fees, as well as implementing fraud protection solutions you may not have in place. The goal for both your company and your banker should be to save you money and make you money, while protecting against fraud.

Some solutions include escrow with virtual sub-accounts, Positive Pay, ACH blocks/filters, remote deposit capture scanners for check deposits and SFTP encryption keys with integrated payables/file transmissions compatible with your software provider.

“If your banking relationship had an expiration date much like an insurance policy, would it prompt you to take a look at what you have versus what you need?”

There is an ongoing debate between bank checks and wires as states are defined as "escrow" or "attorney" states. Escrow states mostly use wires whereby attorney states use both. So which is the safest way? There are considerations when deciding to use either bank checks or wires, and your business banker can walk you through the best options available for your unique situation.

One innovation on the horizon is [Real Time Payments](#) (RTP)—a new platform that rivals ACH and wire platforms—which is expected to be adopted by the industry in the next year. The development of RTP will allow money to be electronically exchanged in minutes between sender and receiver.

Pros and Cons on Wires vs. Bank Checks

I am respectfully not debating whether wires should be used over bank checks since fraud may occur in either case, however, here are several reasons to consider regarding these different payment methods.

Checks—although they may be cheaper—in general can be compromised through internal company fraud or human error

without a dual control system in place. Checks, whether you use bank checks or non-bank checks, are subject to human error as incorrect information displayed on the item such as the dollar amount or misspelling of the payee causes a delay in processing.

When mailing a check, you are providing the company paper stock, payee name and account number almost as if you were mailing a copy of a signature card. If a fraudster intercepts the check, the sender would have to place a stop payment, post a bond and then wait for a re-issuance of that check.

There is an example of an attorney mailing bank checks to a qualified intermediary through a shipping service. The shipping box was broken into and the bank checks were negotiated creating a delayed real estate closing. The attorney firm had to post a bond of a significant size and wait a specific number of days before the check could be re-issued to the payee.

I mentioned before that a dual control system would help in the efforts to protect against fraud. Here is why: A business using a bank's online systems should be sophisticated enough to allow "entitlements" to be assigned to their client's employees.

For example, one company employee can be set up to create a wire and another to send the wire, thus creating a dual control system within the company. Incoming and outgoing wire alerts should also be set up to monitor account activity. Wires will arrive much sooner than checks unless stopped for an internal fraud review by the bank.

Create Efficiencies and Drive Down Costs

The adoption of an RTP platform is expected to significantly reduce bank check usage as well as reducing the human error associated with checks while improving your cash flow since money is received more quickly.

RTP platforms may result in lower fees, better liquidity and faster processing.

Businesses should understand the evolving payment landscape as they assess their banking relationships on an ongoing basis. As a banking client, you should feel empowered to ask your bankers to review your accounts and help you learn about the new tools, fraud protection and innovations that may be available to you.

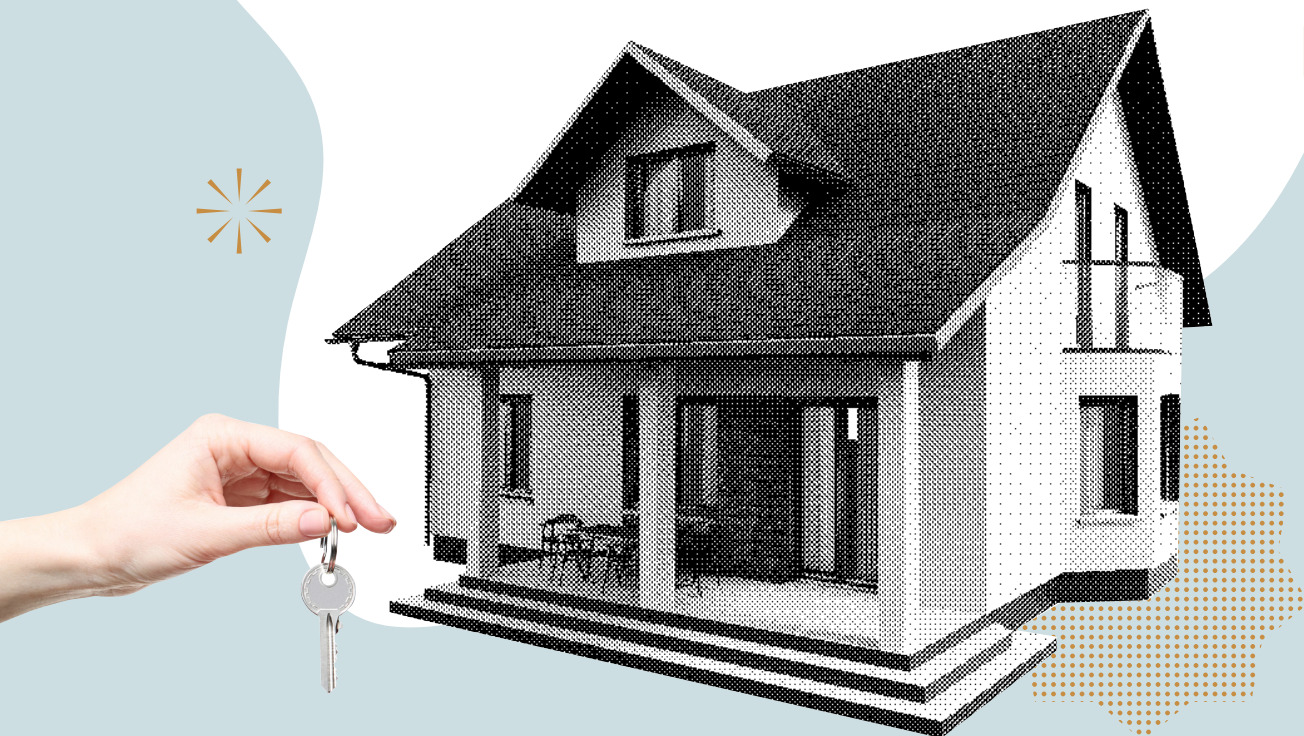
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MARIO D'AMORE is senior business development banker/director at Capital One Bank. He can be reached at mario.damore@capitalone.com. The views in this article reflect the view of D'Amore and not necessarily those of Capital One.





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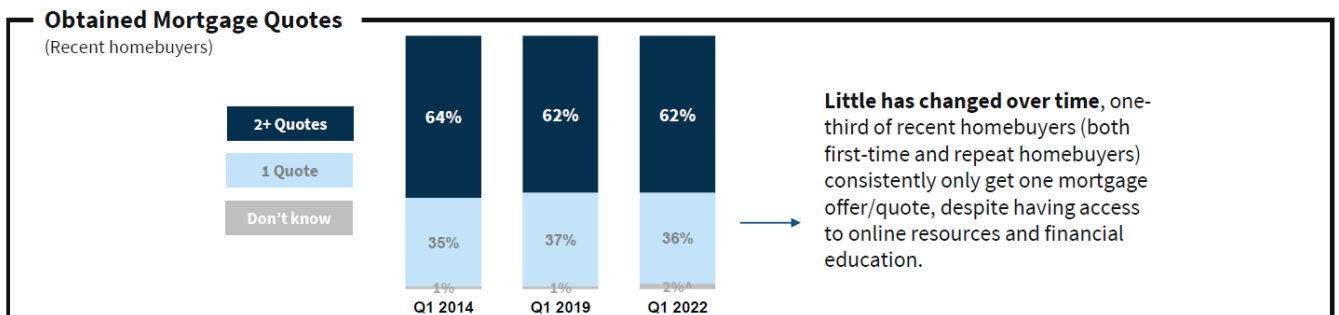
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A Third of Recent Homebuyers Still Don't Shop Around for Mortgages



CONSUMER BEHAVIOR TO SHOP AROUND AND FIND THE BEST MORTGAGE TERMS has remained the same over the past eight years, according to Fannie Mae's latest [National Housing Survey \(NHS\)](#).

Fannie Mae's latest survey from Q1 2022 found that 36% of 2021 homebuyers received only one mortgage quote. This is consistent with survey findings from prior years, Q1 2014 and Q1 2019. Interestingly, first-time and repeat homebuyers do not show much difference in their mortgage shopping behavior. Approximately one third of both groups received only one quote across all years, Fannie Mae reported.



In Q1 2022, Fannie Mae found the top two reasons cited by recent homebuyers who only received one quote were the same top reasons cited in Q1 2019 and Q1 2014:

1. Feeling most comfortable with the lender they received the quote from (39%).
2. Satisfaction with the first quote they received (29%).

Title and Settlement Services

In Q1 2022, the survey found that 91% of homebuyers did not solicit competitive bids for title and settlement services after receiving the Loan Estimate, despite the fact that title costs are listed as items you can shop for.

Instead, according to Fannie Mae, homebuyers typically followed what was recommended, perhaps an indication that they do not know how to shop for these services, or they find it easier to go along with what their lender or real estate agent recommends. Title companies, therefore, may experience very little competition from a cost perspective, particularly after they build relationships with agents and lenders that recommend them to their clients.

Mortgage Quote Comparisons

Of those who received multiple mortgage quotes, the quoted interest rate and monthly payment were the top mortgage-related items that homebuyers compared. Monthly payment was significantly more important to first-time homebuyers

(the majority of whom tend to be younger and lower-income) compared to repeat homebuyers. Closing cost estimates were the third most important cost item to compare among recent homebuyers.

In their analysis, authors John Thibaudeau, vice president of single-family real estate asset management at Fannie Mae, and Rachel Zimmerman, market research advisor and national housing survey lead at Fannie Mae, wrote, "These results suggest to us that there remains substantial room for improvement in mortgage shopping and negotiating behavior during the homebuying process. Despite a plethora of readily available information, over the last decade a consistent percentage of consumers still obtain only one mortgage quote, indicating perhaps that not much has changed to make it easier for consumers to shop around. For most, the cost of purchasing a home will be the largest expenditure of their lifetime, and spending time on the mortgage details upfront could offer substantial savings over the life of the loan. We believe that more innovation in the mortgage comparison process, such as creating user-friendly technology or systems designed to offer transparent, impartial, and easy-to-understand quote comparisons across potentially different loan types, may incentivize people to seek additional mortgage quotes and ultimately provide substantial savings for borrowers."



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More Attorneys General File Complaints Against MV Realty

The attorneys general in [Massachusetts](#) and [Pennsylvania](#) joined [Florida](#) in filing complaints against MV Realty, alleging that the company misled consumers over the terms of the brokerage's "Homeowner Benefit Program."

MV Realty offers to pay up-front money to homeowners whether or not they have plans to sell their home. In exchange for between \$300 and \$5,000, homeowners sign an agreement stating if they decide to sell, MV Realty has the exclusive right to list their home on commission, generally 6% per the agreement. MV Realty operates in 33 states and has more than 500 licensed agents.

ALTA [released a statement](#) applauding the attorney generals in these states for their efforts to combat unfair and deceptive practices in the real estate market.

"A home often represents a consumer's largest financial investment, and their property rights must be protected," said ALTA CEO Diane Tomb. "Good public policy should support the certainty of landownership by ensuring there are no unreasonable restraints on future ability to sell or refinance property due to unwarranted transactional costs."

The agreement also states if the homeowner defaults during those 40 years, whether by losing the home through foreclosure, listing the home with another real estate agent or listing it for sale by owner, the homeowner would owe MV Realty an early termination fee equal to 3% of the property's fair market value. Homeowners also waive their right to be party to a class action lawsuit.

According to Attorney General Maura Healey, MV Realty began doing business in Massachusetts in 2021 and has sold over 500

HBAs to homeowners across almost every county in the state.

"MV Realty's business model and contract terms are unconscionable, targeting elderly and financially vulnerable homeowners who are short on cash, only to leave them with agreements they don't understand and can't get out of," Healey said. "We are suing to get homeowners out of these contracts, protect our residents from this scheme, and stop this predatory company from doing any more business here in Massachusetts."

The contract allows MV Realty to place a lien on their home. The lawsuit filed in Florida by Attorney General Ashley Moody states that the liens are illegal under state law. Moody said the liens often make it difficult or sometimes impossible for homeowners to refinance or otherwise tap into home equity. Additionally, the company uses abusive and deceptive telemarketing practices, including calling millions of people on the National Do Not Call Registry and leaving millions of unwanted, pre-recorded voicemails, according to Moody.

ALTA has prioritized combating this abusive and anti-consumer activity in the marketplace, which adds costs and complications to the transfer or financing of real estate. ALTA has worked with national stakeholders to design model legislation to make these types of unfair agreements unenforceable, prevent the recording of the agreements in land records and provide consumers with options for seeking damages.

Currently, more than a dozen states are considering introducing legislation in 2023 on this issue. A subgroup of ALTA's State Legislative/Regulatory Action Committee developed a [model bill](#) prohibiting unfair service agreements.

CFPB Proposes Registry of Nonbank 'Repeat Offenders'

The Consumer Financial Protection Bureau (CFPB) [proposed a rule](#) that would require certain nonbank financial firms to register with the bureau when they become subject to certain local, state or federal consumer financial protection agency or court orders.

The CFPB has further proposed to publish the orders and company information via an online registry. Larger companies subject to the CFPB's supervisory authority would be required to designate an individual to attest whether the firm is adhering to registered law enforcement orders.

The CFPB proposes that:

- **Covered nonbanks would report certain agency and court orders connected to consumer financial products and services:** Generally, nonbanks would have to report final agency and court orders and judgments, including consent

and stipulated orders, brought under federal consumer financial protection laws or state laws regarding unfair, deceptive, or abusive acts or practices.

- **Larger supervised nonbanks would designate a senior executive to attest regarding the firm's compliance with covered orders:** Larger nonbanks that are supervised by the CFPB would be required to designate a senior executive to submit an annual supervisory written statement attesting to the steps taken to oversee the activities subject to the order and whether the executive knows of any violations of, or other instances of noncompliance with, the covered order.

Covered nonbanks are the only entities subject to the reporting requirement. This includes businesses that provide a consumer financial product.

There are two exclusions:



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27+
Years of expertise in the Title and Settlement industry

50,000+
Daily Transactions

4 - 6
Weeks Implementation

50
States Coverage

6000+
Users



Customizable Workflows

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Consumer Portal

Robust and centralized consumer portal that is easy to use and enables you to exchange information and collaborate with all parties on the transaction



Open Integration Framework

With our open integration framework, you'll be able to directly integrate multiple vendors with ease in your entire title and lending ecosystem.



Robust Vendor Management

Seamlessly integrate and manage multiple vendors involved in the closing process to achieve a faster and consistent closing.

Why AtClose?

AtClose is a fully secured cloud-powered title production solution that simplifies comprehensive title workflows. This next-gen platform leverages predictive data and end-to-end automation to help settlement agents, lenders, and vendors prioritize tasks, shorten title clearing and closing cycles, and enhance collaboration with a laser-focused approach.



Learn how AtClose has helped companies in the Title & Settlement industry overcome the challenges of title document preparation, vendor relationship management, and more.

- Companies in the business of insurance are excluded from the reporting requirement.
- The proposed rule includes an exclusion to mirror the requirements of 12 U.S.C. 5517 limiting the CFPB's supervisory authority for entities or people that offer services adjacent to financial products like real estate brokerages, merchants and persons regulated by a state insurance commissioner or practicing law.

One caveat is that the CFPB has authority over settlement services through the Real Estate Settlement Procedures Act (RESPA). The bureau may try to include ALTA members when the case or penalty is RESPA based.

In addition to publishing information about the agency or court orders, the CFPB is considering publishing certain registration information about companies on the CFPB's publicly available website.

While the CFPB might later consider collecting or publishing the information described in the proposal from insured banks and credit unions, the bureau said there is greater need to collect this information from nonbanks under its jurisdiction.

Several County Recording Offices Impacted by Possible Cyberattack

A possible cyberattack against a property records management vendor over the holidays left several county offices unable to search their land records or electronically record documents.

Lorain County Recorder Mike Doran [told](#) the *Chronicle Telegram* that several county recorders offices across Ohio were impacted by the attack, including Ashtabula, Columbiana, Delaware, Knox and Portage counties. All use Cott Systems to manage their property

records.

Cott told its customers it was working with outside cybersecurity firms to figure out how "potentially malicious files got to our infrastructure Christmas Day/night and we continue to work on fully containing them."

A note on the [Lorain County Recorder's Office](#) website said:

"Our vendor is currently experiencing technical difficulties with our record search system. They are working as quickly as possible to resolve this issue. We apologize for the inconvenience and will update this message as soon as the system is back up."

The incident is being investigated by the FBI and Homeland Security as cyberattacks have impacted several other jurisdictions as well, including the city of Farmington, Conn.; Onondaga County Clerk in New York; Halifax County Register of Deeds in North Carolina; Florence County Register of Deeds in South Carolina; and Dallas, Scott, Allamakee, Black Hawk and Jasper counties in Iowa.

An employee in the Halifax County Register of Deeds Office said their computers were back up Jan. 4, but were back down Jan. 5. E-recordings as of now can't be performed, but documents can be dropped off at the office. The office has folders for each day and marks the time and day when documents are submitted to keep things in order.

TitleOne Expands Into Montana

TitleOne expanded its footprint by opening an office in Bozeman, Mont.

"We're excited to be bringing our full suite of closing services, innovative real estate tools and the proven expertise of our title and escrow officers to the Bozeman real estate market," said Jason Vickrey, president of TitleOne. "Broadening our footprint to better serve agents and their customers in the

Northwest has been a key part of our strategy."

TitleOne now has 27 offices in Idaho, Washington, Utah and Montana.

The company has been named among the top 10 "Best Places to Work in Idaho" in the large employer category. Through its CommunityOne foundation, the company has contributed more than \$2 million local charities.

LodeStar: Lenders Using Closing Fee Tech Required One Cure Every 22,000 Quotes

Mortgage loan originators using the closing fee calculator technology of LodeStar Software Solutions in 2022 averaged one inaccuracy requiring a cure out of every 22,000 fee estimates or quotes, the company reported.

LodeStar is a national provider of closing fee-related compliance tools for mortgage lenders.

The TILA-RESPA Integrated Disclosure (TRID) rule mandates that closing fees reported on each transaction's Closing Disclosure (CD) must fall within a specified level of accuracy in comparison with the Loan Estimate (LE) disclosure issued by the lender at the beginning of the mortgage process. Where specified fees disclosed in the CD fall outside of those accuracy guidelines, that lender is legally responsible for curing the difference.

"One of the most transparent ways to determine the true effectiveness of the TRID guidelines is to determine cure rate," said LodeStar CEO and Co-Founder Jim Paolino. "We're proud to be an integral part of adding clarity to the mortgage lending process, and thrilled to demonstrate just how accurate, and current, our data is. We're also pleased to say that this rate is almost twice as good as what we experienced in 2021."

Flueid and Notarize Integrate to Help Fuel Digital Closing Experience

Flueid announced a new integration with Notarize to help streamline title and lender workflows to improve the end-to-end digital consumer experience.

Notarize provides an all-in-one platform for hybrid or fully remote online closings for purchase, refinance and home equity transactions.

Flueid Decision brings purpose-built title data and insights to the start of the residential real estate workflow. This allows lenders to check title at the loan application and use data and key alerts to understand if a transaction is clear-to-close, make decisions about a loan, and set the right workflow. Then, when title is ordered, the platform helps Flueid title partners easily produce and deliver a title commitment that matches the information provided to the lender for an accurate and efficient process.

SoftPro Integrates Property Tax Reporting With DataTrace

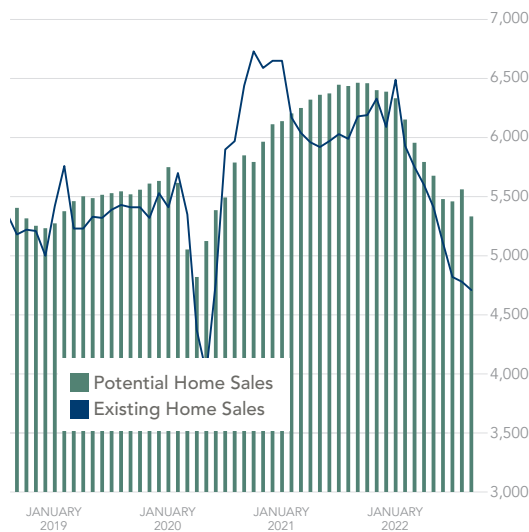
SoftPro announced a new national property tax reporting integration with DataTrace Information Services LLC.

The integration of the DataTrace TaxSource report and the SoftPro 360 business exchange portal provides users with automated access to national tax status reporting. SoftPro users also have access to DataTrace's fully managed Title Production Services (TPS) and regional tax information and certificate services, all in one platform.

The integration reduces time-consuming data entry and improves efficiency and accuracy. TaxSource delivers nationwide property tax data at the city and county level, which undergoes rigorous validation and standardization to consistently deliver accurate tax data regardless of jurisdiction.

Housing Market Potential

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



4.71 SAAR
Existing Home Sales

5.33 SAAR
Potential Home Sales

-11.7%
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

September 2022

\$351,322
House-Buying Power

-29.3%
Year-Over-Year

Where House-Buying Power is Strongest

Top States and Markets

- | | |
|--|--|
| 1 New Jersey
\$505,641 | 1 San Jose, CA
\$736,392 |
| 3 Massachusetts
\$500,690 | 2 San Francisco, CA
\$677,532 |
| 2 Maryland
\$485,564 | 3 Washington, DC
\$621,383 |
| 4 Hawaii
\$479,553 | 4 Boston, MA
\$564,666 |
| 5 California
\$465,895 | 5 Seattle, WA
\$503,811 |

Source: Mark Fleming, Chief Economist at First American Financial Corporation



Old Republic Title CEO to Retire

MARK BILBREY RETIRED AS CHIEF EXECUTIVE OFFICER OF OLD REPUBLIC NATIONAL TITLE INSURANCE CO. EFFECTIVE AT THE END OF JANUARY.

Bilbrey started working at a part-time industry job 52 years ago. The profession, he said, “became my life, my family, my passion and my purpose. It has introduced me to the best people in the

world, most of whom have become lifelong friends.”

“I will obviously miss the people the most: my coworkers, customers and competitors. I will also miss the satisfaction of getting the deals done, problems solved and helping people get into their property,” Bilbrey continued.

After earning his accounting degree from Oklahoma University in 1980, Bilbrey took a job with Warranty Title & Abstract in El Reno, Okla. He was named company president in 1990. In 1997, Bilbrey and other investors purchased the company. They sold the agency in 2003 to First American, where Bilbrey became its national agency sales manager for several years.

Bilbrey joined Old Republic Title in 2007. He was appointed executive vice president in 2008 and became president of Old Republic National Title Holding Co. in 2010. He served as CEO since 2019.

“Mark has been a tremendous leader and has had a great impact on our organization, helping guide us through some of the most challenging markets and positioning us for the future,” the company said. “We are very grateful for his long and distinguished service and wish him well on this next adventure with his family.”

Bilbrey was ALTA’s 2005 president. Over the years, he served as chair of the Finance Committee, Abstracter/Agent Research Committee, co-chair of the Title Insurance Political Action Committee (TIPAC) and as a member of the Government Affairs Committee and Nominating Committee for Abstracters and Title Insurance Agents Section, Title Insurance Assurance Corporation (TIAC) and Title Reinsurance Corporation (TRC).

In 2009, Bilbrey received an honorary membership from ALTA. He also is a past president of the Oklahoma Land Title Association.

“My participation in the Oklahoma Land Title Association led me to the American Land Title Association, which without question changed the course of my career,” Bilbrey

said. “I truly have been blessed, and I can trace most of those blessings in my life to this industry.”

Always remaining humble, Bilbrey said he never really thought about his industry accomplishments.

“I might call them blessings,” he said. “I have had so many people help, mentor and coach me along the way that I always felt success and accomplishments happen as a group effort. I have done my best to return that same gift to others.”

ALTA Past President Anne Anastasi, CLTP, NTP, first vice president for Old Republic Title, shared similar sentiment about Bilbrey.

“When Mark called you a friend, he truly meant it,” Anastasi said. “The amazing thing is, he has more friends than anyone I have ever met. He is kind, sincere, honest and a shining example of the word integrity. The industry will miss him, but the universe in which Mark continues to walk will benefit from the warm embraces he freely gives.”

ALTA Past President Cara Detring, president of Preferred Land Title in Missouri, said Bilbrey is one of the few professionals she knows who understands the big picture of the title industry. Bilbrey was a natural to rise to leadership in ALTA and OLTA due to his experience as a title agent and an underwriter.

“The industry is better for his leadership based upon the experience of being ‘in the trenches’ as a title agent, and he then applied that understanding to the insurance side of the industry,” Detring said. “He has a great sense of humor and more one-liners than anyone I know. Mark is one of those guys who never meets a stranger, and the first thing he says to anyone is ‘What can I do for you?’ or ‘How can I make your day better?’”

Detring said she and her husband, Terry, are looking forward to spending more time with Bilbrey and his wife, Cathy.

“Selfishly, Terry and I are looking forward to his retirement and the ability to spend time with Mark and Cathy without having to sit down with a calendar!” Detring said. “I am sure his retirement will be an adjustment because change takes adjustment. He is not riding off into the sunset. Mark and Cathy will be moving into a new chapter of their life together. One thing you can count on, he will continue to give his best effort and will always say ‘Hello friend, what can I do for you?’”

Monarch Title Names New President



Christy Lyons

Christy Lyons has been promoted to president at Missouri-based Monarch Title Company Inc.

CEO Chuck Bowman said Lyons has been a key part of Monarch Title's success. She joined the company in April 2019 as branch manager in the Jefferson City office, where she was successful in making that branch the highest revenue-generating office in the company's fleet of offices. Lyons has 25 years of experience in the title insurance business as senior escrow closer and manager with several companies.

Monarch Title, which was founded in 2001, employs 20 people in the mid-Missouri area with a motto "Service with Distinction." In addition to Jefferson City, the company has offices in Columbia, Boonville, Marceline and Centralia, Mo.

Bowman, who has been a shareholder of the company since 2002, had served as president since 2012. He and his wife, Pam, bought the company in January 2020. Bowman said he will remain as CEO/owner, but promoted Lyons as part of his succession plan. He plans to retire at the end of 2023.

"As owner, I will stay involved and still come into the office periodically in 2024, but wanted to have someone who can run the day-to-day operations," Bowman said.

Security Title Hires South Carolina State Manager



Toni Carroll

The Security Title Guarantee Corp. of Baltimore recently hired Toni Carroll to serve as South Carolina state manager and chief training officer. The chief training officer position is a new role to help guide Security Title's agents across multiple states. Carroll has held several leadership posts in the title industry during her career.

"Education and training are always key in our business, and that is especially true in uncertain times," Carroll said. "I'm excited to share my expertise with others and join the Security Title team. I appreciate this opportunity to continue to be part of such a strong and friendly industry."

Stewart Announces Promotions in the Legal Department

Effective Jan. 1, Elizabeth Giddens has assumed the role of chief legal officer and corporate secretary for Stewart, following the planned retirement of John Killea as chief legal officer and chief compliance officer.

Giddens's succession of Killea was announced by the company in October as she was hired as deputy chief legal officer to work alongside Killea during his transition. Giddens comes to Stewart with 25 years of legal experience, including five years at a top international law firm and 16 years at several public companies, most recently serving as senior vice president and general counsel at Integer Holdings Corp.

In addition, Mary Thomas was promoted to chief compliance and regulatory officer. She has spent her entire 16-year career at Stewart and has built a strong reputation at ALTA and amongst many state land title associations, as well as the company's various regulators. Thomas will continue to chair the NAIC Liaison Committee for ALTA. She is admitted to practice law in Texas as well as before the U.S. Supreme Court.

Also, Pamela O'Brien has been named general counsel of Stewart Title Guaranty Co. O'Brien, a 30-year title industry veteran, began her career with Stewart as an underwriter in Massachusetts in 2001 and quickly took on all New England underwriting responsibilities. She added claims and litigation responsibilities soon after and eventually became chief litigation counsel and deputy general counsel.

Sekady Names Vice President of Sales

Sekady Capital LLC recently hired Tony Codina as vice president of sales. He brings experience in enterprise sales and customer success, and will lead sales and business development for Sekady products and services. Over the last 20 years, Codina has managed teams in the transportation industry across verticals including asset management, brokerage, compliance, sales and strategic accounts.

Innovation Must Still Protect Property Rights



JACK RATTIKIN III
ALTA president

OVER THE PAST SEVERAL MONTHS, ALTA has emailed weekly updates to keep members informed on the latest efforts by the Federal Housing Finance Agency (FHFA), Fannie Mae and Freddie Mac to help promote homeownership to those in underserved communities.

Last year, the FHFA released Fannie Mae's and Freddie Mac's Equitable Housing Finance Plans for 2022-2024. The plans reference closing costs and title insurance and the GSEs' intent to pursue avenues to examine these costs for low- and moderate-income minority borrowers, including through consideration of alternative product pilots, such as attorney opinion letters (AOLs). The GSEs both now accept AOLs in lieu of a title insurance policy "in limited circumstances."

We support innovation and competition in the title industry. New products, however, shouldn't weaken protection for consumer property rights. As we know, title insurance is heavily regulated. State departments of insurance oversee the industry's practices and rates to ensure they are not excessive, inadequate and unfairly discriminatory. State regulators capture annual revenue and expense data from title insurance agents and underwriters for the purpose of measuring the profitability, competitiveness and reasonableness of title rates and charges.

In a recent [HousingWire column](#), ALTA CEO Diane Tomb outlined how title insurance has been essential for more than 100 years in protecting our real estate ecosystem. According to economist Hernando de Soto, the author of "The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else," title insurance is the key to unlocking wealth in America. In many third-world countries, only a small percentage of people enjoy clear property rights. As a result, they have no ability to leverage their homes as an asset to create wealth and more business opportunities.

While we welcome and embrace innovation, certain AOL products—under the guise of reducing costs—shift risk to lenders and consumers, who will ultimately have less recourse, and greater costs, should their property rights be challenged. Importantly, there are also real questions about how these alternative products are regulated and who will provide oversight. These emerging products lack a similarly comprehensive regulatory regime compared to title insurance.

ALTA and its members advocate for the best consumer protection possible. Beyond AOLs, there's been a flurry of action by regulators taking action to protect consumers. In Texas, the attorney general is [investigating Home Title Lock](#) for potentially violating the state's Deceptive Trade Practices Act by misleading consumers with deceptive statements concerning the prevalence of home title theft and the need for the company's services. Meanwhile, attorneys general in multiple states [have filed complaints](#) against MV Realty, alleging that the company misled consumers over the terms of the brokerage's program.

It's important for all ALTA members to be informed and understand the risk involved with various products in the market, so we can clearly communicate to lender customers, legislators, regulators, consumers and other interested parties. We need to keep spreading the message that title insurance provides the best protection to homeowners and lenders. Veiled innovation efforts shouldn't compromise this protection.



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