

TITLE NEWS

SEPTEMBER 2023

AMERICAN LAND TITLE ASSOCIATION

Focus on Foreign Land Ownership

*Plethora of State Bills Target
International Transactions
in U.S. Real Estate*



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TITLENews

The digital edition of **TITLENews** includes a webinar recording that explains how title professionals can use Canva to create engaging marketing material. The presentation shows how Canva's drag-and-drop functionality, pre-designed templates and extensive library of images, fonts, and graphics have leveled the playing field for aspiring designers.

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Education Process Continues



JEREMY YOHE

ALTA vice president of communications

YOU MAY HAVE SEEN THAT FANNIE MAE IS NO LONGER PURSUING THE TITLE WAIVER PILOT PROGRAM IT HAD UNDER DEVELOPMENT.

The now-canceled pilot will not be submitted to the Federal Housing Finance Agency (FHFA) for review or consideration. This is a significant achievement to protect consumers, lenders and the housing finance system. While the pilot isn't moving forward, Fannie Mae and Freddie Mac are still unfortunately accepting certain attorney opinion letters (AOLs) in lieu of a title insurance policy "in limited circumstances."

Increasing housing affordability and sustainability is an important goal. Keeping the proper safeguards and protections in place is also essential. Taking shortcuts that increase risks to both lenders and consumers—to save a little money on the front end—would be disastrous.

Priscilla Almodovar, CEO of Fannie Mae, agrees. In a recent opinion piece, Almodovar wrote that "we can make choices that expand housing opportunities, safely and responsibly." At ALTA, we couldn't agree more. The key words here are "safely and responsibly." The most vulnerable consumers shouldn't be offered inferior products that offer less protection because they are cheaper. There are scenarios where an AOL may not provide proper protection, but a title insurance policy would. We will continue to educate all stakeholders that title insurance provides the best protection to consumers and lenders.

As an industry, we believe homeownership should not just be a privilege for a select few. We are committed to making homeownership both more affordable and accessible for everyone.

Over the past year, we've highlighted member companies doing what they can to help with home affordability. Morrie Erickson, owner and president of TitlePlus!, recently shared that his company will be handling transactions for low-income homebuyers purchasing single-family homes from a non-profit corporation established by the City of Bloomington, Ind. Erickson said the project consists of about 50 lots. The homes will be prefabricated at a manufacturing facility and assembled on the lots, making the cost and delivery time predictable. The city will own each lot and lease the homes to the buyers. "If the buyer wishes to sell, the city will have a right of first refusal or option to purchase so it can convey the residence to a qualified buyer on a waiting list who will receive an assignment of the leasehold and a deed to the improvements," Erickson said.

We love highlighting our members' involvement in these projects. If you'd like to share initiatives your company is involved with, email us at communications@alta.org.

There's more work to do educating stakeholders about why title insurance is the best option to protect property rights. The process continues!

| ALTA Supports CFPB's Proposed PACE Rule

ALTA sent a letter to the Federal Housing Finance Agency expressing support for the Consumer Financial Protection Bureau's (CFPB) proposed rule for Property Assessed Clean Energy loans (PACE).

In May, the bureau issued a proposed rule that would require lenders to assess a borrower's ability to repay a PACE loan and would provide a framework on how these loans will be treated under the Truth in Lending Act.

PACE loans are a controversial type of financing that allows homeowners to pay for energy-efficient retrofitting through their property tax assessments.

These loans often take lien priority over the first mortgage lien. ALTA has said that when buying a home, Americans need to know if they are going to be responsible for someone else's debts. ALTA has supported proposed federal legislation that would modify consumer protection requirements for PACE loans.

"ALTA members recognize the value in lowering energy costs for consumers, creating jobs for the economy and reducing buildings' carbon footprint for the environment," ALTA General Counsel Steve Gottheim said in the letter. "However, we believe PACE loans should be subject to all the same consumer

protections under TILA as any other mortgage loans. For this reason, we support the proposed rulemaking to require that PACE lenders conduct an ability to repay analysis and provide disclosures to consumers on PACE loan costs."

In November, the Federal Trade Commission (FTC) and the California attorney general took action against home improvement financing provider Ygrene Energy Fund Inc. for deceiving consumers about the potential impact of its financing, and for unfairly recording liens on consumers' homes without their consent.

| ALTA Good Deeds Foundation Provides Grant For Vermont Flooding

The ALTA Good Deeds Foundation (AGDF) awarded a \$5,000 emergency grant to the Vermont Main Street Flood Relief Fund. The fund provides grants to Vermont's small business owners who were impacted by severe rainstorms that caused catastrophic flooding.

Partnering with Capstone Community Action, the relief fund provides grants in the range of \$2,500 to \$10,000 to cover costs such as equipment replacement, supplies replenishment and cleanup. Donations made to Capstone are restricted for the sole use of the relief fund to ensure they are used for their



intended purpose.

"Vermont communities were devastated by the recent flooding, including many local small businesses," said ALTA CEO Diane Tomb. "This

emergency grant from the ALTA Good Deeds Foundation will be spent on rebuilding not just the businesses themselves but also the thriving community to which

they belong."

AGDF Board Chair Mary O'Donnell, CEO of Westcor Land Title Insurance Co., added, "Our thoughts are with those who lost a loved one or no longer have a home or business. In less than three years since the ALTA Good Deeds Foundation was founded, we have awarded \$729,000 in grants to 124 community nonprofits in 40 states and Washington, D.C. Because of ALTA members' support of the foundation, we are able to help return these communities to their former glory. Good deeds truly do grow communities."

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- Individual recognition in ALTA publications and website
- Discounts on ALTA meetings
- Special benefits and recognition at ALTA meetings and select State Land Title Association events
- Right to use the NTP designation and logo in your business publications, website and correspondence, including marketing efforts, resume and networking activities

To apply for the NTP designation, you must meet several individual, licensing and training prerequisites. You must be an ALTA member and, if your state land title association offers a similar designation, you also must earn your local credential before applying. Once all prerequisites are met, you must earn a minimum of 100 NTP points to qualify for consideration. Points can be earned in many areas, including industry experience, education and training as well as involvement with ALTA, your state land title association and other professional organizations. All applications are reviewed by the NTP Council.

Apply today at alta.org/ntp.

For those in Florida, ALTA is working with the Florida Department of Financial Services to approve the NTP designation for use in the state under Florida Administrative Code 69B-215.235 (Use of Designations). At this time, the program has not been approved, so we recommend waiting to submit your application.

| 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: 54
- Title Agents: 37
- New Attorney Members: 6
- New Associate Members: 5
- State With the Most, New Members: Texas with 22
- Total Members: 6,023

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 \$373,664 from 497 people. In addition, \$149,000 from 18 companies has been pledged to the TIPAC Education Fund. Check out who has supported the industry at alta.org/tipac.

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October 10-13
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NORTH DAKOTA

Sept. 7-8
Fargo, N.D.

PENNSYLVANIA

Sept. 10-12
Bedford, Pa.

WISCONSIN

Sept. 13-15
Eau Claire, Wis.

MISSOURI

Sept. 13-15
Kansas City, Mo.

NORTH CAROLINA

Sept. 14-16
Isle of Palms, S.C.

SOUTHEAST

Sept. 14-16
Point Clear, Ala.

INDIANA

Sept. 17-19
Indianapolis, Ind.

NEBRASKA

Sept. 20-22
Omaha, Neb.

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Focus on Foreign

Plethora of State Bills Target International Transactions in U.S. Real Estate




Land Ownership

By Jeremy Yohe

OVER THE PAST DECADE, the U.S. Department of Agriculture reported that foreign investment in U.S. real farmland increased by an average of about 2 million acres a year from 2015 to 2021. Meanwhile, international buyers purchased \$59 billion in U.S. residential property between April 2021 and March 2022, an 8.5% year-over-year increase, according to a report from the National Association of Realtors (NAR).

However, according to the 2023 report from NAR, the number of homes purchased by international buyers fell to its lowest level in at least 14 years as foreign investors grapple with the same market headwinds of higher interest rates and limited supply faced by domestic buyers.



Another dynamic could be impacting purchases of U.S. real estate by foreign buyers as well. Not only is the federal government considering legislation that would limit some foreign investors from purchasing U.S. real estate, bills with similar restrictions also have been passed or introduced in half of the states.

All told, more than 140 bills have been introduced at the state level that would restrict the purchase of U.S. property by certain foreign entities and individuals. Legislation has been passed in 14 states just this year. Laws in Arkansas, Florida, Louisiana, North Dakota, Tennessee and Utah impact all property in each state. Other laws are limited to agricultural land or land near military or critical infrastructure.

“Given the rapid introduction of these bills and the bipartisan support for them, ALTA quickly pulled together a work group that met several times over a week and a half to discuss the industry and consumer impact of these proposals,” said Elizabeth Blosser, ALTA’s vice president of government affairs. “Any law regarding ownership of U.S. property should establish specific processes and procedures to protect the valid property interests of American sellers, lienholders and future property owners and the reliability of land records.”

Federal Legislation

Currently, no federal law exists that restricts foreign persons, entities, or governments from acquiring or holding U.S. agricultural land. While there are approximately 24 states that specifically forbid or limit foreign ownership of farmland within their state, the federal government only monitors certain foreign acquisitions and landholdings in agricultural land through the Agricultural Foreign Investment Disclosure Act of 1978.

As of 2021, the National Agricultural Law Center reported foreign persons held an interest in over 40 million acres of U.S. agricultural land. This accounted for 3.1% of all privately held U.S. agricultural land and 1.8% of all land within the United States.

Chinese purchases of U.S. agricultural land sparked concern in Congress among a bipartisan group of lawmakers. This concern was punctuated earlier this year when China-based Fufeng Group Ltd. was prevented from building a corn mill on land near a North Dakota Air Force base after officials called it a security risk. Additionally, the Chinese spy balloon shot down in February increased worries that foreign governments could use U.S. land for espionage.

China owns roughly 384,000 acres of U.S. agricultural land, according to a 2021 report from the Department of Agriculture. Of that, 195,000 acres, worth almost \$2 billion when purchased, are owned by 85 Chinese investors, which could be individuals, companies or the government.

SOURCE: NATIONAL ASSOCIATION OF REALTORS

Percent Share of Top 10 Countries of Origin to Foreign Buyer Purchases										
	China*	Mexico	Canada	India	Colombia	United Kingdom	Australia	Germany	Venezuela	Israel
2007	9%	13%	10%	6%	3%	12%	1%	3%	3%	0%
2008	8%	9%	23%	6%	1%	12%	1%	4%	2%	0%
2009	7%	10%	18%	9%	1%	11%	2%	5%	1%	0%
2010	9%	10%	23%	5%	1%	9%	-	4%	1%	2%
2011	9%	7%	23%	7%	1%	7%	-	4%	3%	1%
2012	12%	8%	24%	6%	1%	6%	-	3%	3%	1%
2013	12%	8%	23%	5%	1%	5%	2%	3%	2%	2%
2014	16%	9%	19%	5%	1%	5%	1%	3%	2%	2%
2015	16%	9%	14%	8%	1%	4%	2%	3%	2%	1%
2016	14%	8%	12%	7%	2%	4%	2%	3%	2%	1%
2017	14%	10%	12%	5%	1%	5%	1%	2%	2%	1%
2018	15%	8%	10%	5%	2%	3%	1%	2%	2%	2%
2019	11%	9%	11%	5%	1%	3%	1%	2%	2%	1%
2020	12%	9%	12%	6%	4%	2%	1%	2%	1%	1%
2021	6%	7%	8%	4%	2%	4%	1%	1%	1%	2%
2022	6%	8%	11%	5%	3%	2%	1%	2%	1%	2%
2023	13%	11%	10%	7%	3%	3%	3%	2%	2%	2%

*China includes buyers from the People's Republic of China, Hong Kong, and Taiwan.
Top 10 list is based on the most recent year.*

SOURCE: NATIONAL ASSOCIATION OF REALTORS

Share of Top 10 States to Total Foreign Buyer Purchases										
	FL	CA	TX	NC	AZ	IL	NY	OH	PA	NJ
2009	23%	13%	11%	3%	7%	4%	2%	2%	2%	1%
2010	22%	12%	8%	2%	11%	1%	4%	2%	2%	2%
2011	31%	12%	9%	2%	6%	3%	3%	1%	2%	3%
2012	26%	11%	7%	2%	7%	3%	4%	2%	2%	1%
2013	23%	17%	9%	1%	9%	2%	3%	2%	1%	2%
2014	23%	14%	12%	2%	6%	3%	3%	1%	3%	3%
2015	21%	16%	8%	2%	5%	3%	3%	2%	2%	3%
2016	22%	15%	10%	3%	4%	4%	4%	1%	1%	4%
2017	22%	12%	12%	3%	4%	3%	3%	1%	2%	4%
2018	19%	14%	9%	3%	5%	3%	5%	3%	2%	4%
2019	20%	12%	10%	3%	5%	3%	3%	2%	1%	4%
2020	22%	15%	9%	3%	3%	3%	5%	2%	2%	4%
2021	21%	16%	9%	3%	5%	3%	4%	3%	1%	4%
2022	24%	11%	8%	4%	7%	3%	4%	2%	2%	3%
2023	23%	12%	12%	4%	4%	4%	3%	3%	2%	2%

Top 10 list is based on the most recent year.

Currently, Congress is considering several proposals that seek to restrict certain foreign purchases and acquisitions of U.S. land. Bipartisan legislation aimed at preventing investors in China, Russia, Iran and North Korea from acquiring farmland around the U.S. was included in the 2024 National Defense Authorization Act (NDAA). The Promoting Agriculture Safeguards and Security (PASS) Act, which was introduced by Sens. Jon Tester (D-Mont.) and Mike Rounds (R-S.D.) would prohibit investors from these countries from purchasing U.S. farmland and agricultural companies.

“We cannot allow foreign adversaries like China to buy up farmland around the

country unchecked,” said Sen. Sherrod Brown (D-Ohio), chair of the Senate Banking Committee. “It’s a threat to rural economies, and it’s a threat to our national security.”

Other measures that have been introduced in Congress this year include the This Land Is Our Land Act (S. 684), which seeks to restrict certain foreign individuals and entities domiciled in or associated with China from obtaining an interest in farmland, and the Saving American Farms from Adversaries Act (H.R. 840), which would require the president to take actions necessary “to prohibit the purchase of public or private real estate ... by any foreign person” for a five-year period.

Because of the number of federal foreign ownership proposals being considered in Congress, it is speculated a foreign ownership restriction will be proposed as part of the upcoming 2023 Farm Bill. Agriculture appropriations bills also have various provisions under consideration in both chambers addressing foreign ownership that ALTA is monitoring.

State Legislation

In 2023, the majority of states have proposed at least one piece of legislation that seeks to prohibit or restrict foreign investments and holdings in land—specifically private farmland—located within their state to some degree. Some states that are considering legislation do not currently have laws that restrict foreign ownership of land while other states are considering proposals that would amend their current foreign ownership laws.

Through July, Alabama, Arkansas, Florida, Idaho, Louisiana, Montana, Ohio, Tennessee, Utah and Virginia have enacted foreign ownership laws during their legislative sessions. North Dakota amended its foreign ownership law to extend the state’s restriction to foreign governments and foreign government-controlled entities.

Prohibited purchasers vary by state but encompass governments, entities and individuals from countries including China, Russia, Iran, North Korea, Cuba, Syria, Venezuela and others as established or determined by agencies or governors. Some laws apply to all non-U.S. citizens or non-citizens from countries where U.S. citizens can’t buy real estate.

Even in states with well-drafted provisions, underwriters will have to consider if ownership is subject to a divestiture procedure or an encumbrance on title exists at date of policy and enforcement occurs post policy. Each underwriter will have to decide if they are comfortable relying on an exclusion.

Violation of Fair Housing Laws?

A unique aspect of Florida’s law is the use of an affidavit for buyers of agricultural land on or within 10 miles of a military

installation or critical infrastructure facility. The new law requires an affidavit to be provided at closing by the buyer affirming they are not a “foreign principal” as defined under the law or they are a “foreign principal” permitted to purchase property and they comply with the law. A drawback to that approach revolves around questions of compliance with federal fair housing laws.

On May 22, a group of Chinese citizens living in Florida and a real estate brokerage firm—whose clients are primarily Chinese and Chinese American—filed a lawsuit (*Shen v. Simpson*) against Florida alleging the state’s foreign ownership law violates the U.S. Constitution and Fair Housing Act. According to the plaintiffs, SB 264 violates their equal protection rights promised under the Constitution because the law restricts their ability to purchase real property because of their race.

On Aug. 17, a federal judge in Florida held that because the ban is based on citizenship and not race or national origin, it likely does not violate the U.S. Constitution or a law banning housing discrimination. The American Civil Liberties Union claims the law violates the U.S. Constitution’s guarantees of equal protection and due process and the federal Fair Housing Act (FHA), which prohibits housing discrimination based on race and national origin. The FHA also prohibits discrimination in the sale or rental of “dwellings” on the basis of national origin. The law does not explicitly prohibit discrimination against non-citizens, but HUD

and the courts have recognized that citizenship requirements may have a disparate impact based on national origin. According to NAR, based on the analysis, three conclusions may be made about state legislative proposals that ban the sale or leasing of real property to foreign nationals or entities:

1. State laws that prohibit foreign nationals from specified countries from buying or leasing residential property would almost certainly violate the FHA.
2. State laws that generally limit residential property sales and rentals to U. S. citizens or legal residents, while not explicitly violating the Fair Housing Act, may violate the FH Act based on a disparate-impact theory.
3. State laws that are limited to commercial (non-housing) or agricultural purposes would not violate the Fair Housing Act, though they might raise civil rights issues under other laws:
 - a. The 1866 Civil Right Act’s contract provision, which protects the right to make and enforce contracts for all “persons” regardless of national origin).
 - b. Title VI of the 1964 Civil Rights Act, which prohibits national origin discrimination in programs and activities receiving federal financial assistance.
 - c. The 14th Amendment’s Equal Protection Clause, which limits a state’s ability to discriminate based on national origin, and, to some degree, based on U.S. citizenship.

Principles for Legislation Regarding Foreign Ownership of U.S. Real Estate

Real estate transactions represent approximately 13% of U.S. gross domestic product. Given the importance of real estate to the U.S. economy, ALTA believes any law regarding foreign ownership should establish specific processes and procedures to protect valid property interests and avoid penalizing legitimate sellers, creditors, and future owners of property.

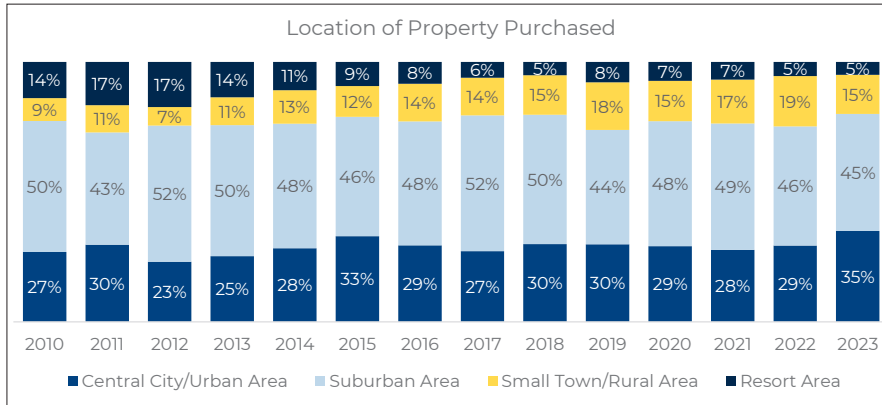
- **Impose Obligations Directly and Only on Buyers:** Only buyers and their legal representatives have sufficient information to determine property ownership eligibility. If bills require reporting of a transaction to the state or other agency, this obligation should be on the buyer directly and should not be the responsibility of any other party.
- **State Laws Must Not Void Transactions:** Any law must lay out a process for a forced divestment or forfeiture by a court of competent jurisdiction after a state agency brings an enforcement action. Unwinding a transaction via judicial proceeding allows legitimate interest holders and creditors (like mortgage and mechanics lienholders) to be made whole. State laws should expressly state that land titles are not

invalid, impaired, or subject to forfeiture because of the foreign status of any former owner or other person having an interest in the property.

- **Designate an Appropriate State Enforcement Authority:** To avoid harmful complications created by invalidating property transfers, legislation should give state agencies enforcement authority, providing investigative powers and establishing due process followed by voluntary or forced divestment of the real estate as appropriate.
- **Follow Existing State Divestment Procedures Like Forfeiture or Foreclosure Laws:** The only remedy for violation of these laws should be a forfeiture or foreclosure type action brought by the state to divest the property, which results in an unappealable judgment.
- **Safeguard the Reliability of U.S. Property Records:** Relevant documents and/or court orders must be recorded by authorized state agencies within local land records. Recordation provides notice of enforcement actions and creates a continuous chain of title, which are necessary to protect future transactions.

- **Protect the Neutral Role of Title Insurance and Real Estate Settlement Professionals:** The foreign ownership bills should not impose obligations that would threaten the role of the title industry as a neutral third party in real estate transactions. To that end, no legislation should require title insurance companies or their employees to make a determination as to the buyer’s national identity, require reporting or the submission of data to a state agency, or impose extra-contractual, civil or criminal liability for closing a prohibited transaction in good faith.





ALTA Helps Develop Legislative Text

Implementation of the differing state laws has caused concern for the title industry. Some key issues include handling transactions that violate state law, voided transactions that create uncertainty and make land records unreliable, lack of enforcement authority and liability for real estate professionals.

ALTA created sample legislative text to help prevent the voiding of past transactions or the creation of long-term impediments to the future transfer of impacted real estate. Here’s a look at some of the text:

1. Express remedy for enforcement.

Sample legislative text: A transfer of an interest in land in violation of this section shall be subject to divestiture as set forth in this section.

2. Identification of the enforcement authority and investigative powers.

Sample legislative text: The attorney general, upon the request of any person or upon receipt of any information which leads the attorney general to believe that a violation of this section may exist, may issue subpoenas requiring the appearance of witnesses, the production of relevant records and the giving of relevant testimony.

3. Provide for divestment of property (via voluntary transfer or forced divestiture following established processes such as judicial foreclosure, receivership or partition).

Sample legislative text: On concluding, as a result of the investigation, that a violation of this section has occurred, the attorney general shall order the [foreign entity] to

divest itself of all interests in the land within [x days/months/years]. If the [foreign entity] fails to divest itself of all interests, or if an interest holder timely objects to the order of divestiture, the attorney general shall commence an action in [superior] court. Except in the case of dismissal, the court shall order that the property be sold pursuant to [insert appropriate state statute for judicial foreclosure, receivership, or partition action under a power of sale].

4. Place obligation for compliance on buyers, as only they can determine purchaser eligibility.

Sample legislative text: The responsibility for determining whether an entity is subject to this section rests solely with the [foreign entity] and the attorney general and no other individual or entity. An individual or entity who is not a [foreign entity] shall not be required to determine or inquire whether another person or entity is or may be subject to this section, and shall bear no civil or criminal liability under this section.

5. Protect lien holders from loss or litigation.

Sample legislative text: Proceeds of the sale shall be disbursed in the following order:

The payment of authorized costs of the sale, including all approved fees and expenses of the referee and any taxes and assessments due.

The payment, in an amount approved by the court, to the [attorney general] for reimbursement of investigation and litigation costs and expenses.

To bona fide lien holders, in their order of priority, except for liens which under

the terms of the sale are to remain on the property.

To the [restricted foreign entity] [state general fund].

6. Protect future property owners from loss or litigation.

Sample legislative text: No title to an interest in land shall be invalid or subject to divestiture by reason of the violation of this section by any former owner or other person holding or owning a former interest in such land.

Reporting Requirements

Under the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA), a foreign person or entity is required to disclose the acquisition, change of control or use, or disposition of any interest in agricultural land to the US Department of Agriculture. However, due to the broad definition of “agricultural land” and the low threshold to be considered a “foreign person” for purposes of applying these rules, many transactions may inadvertently trigger a reporting requirement, the law firm K&L Gates wrote in a bulletin. According to the National Agricultural Law Center, foreign persons in general are required to disclose their interest(s) in U.S. farmland by delivering an FSA-153 report to the Farm Service Agency office in the county where the tract of land is located within 90 days after the date of such acquisition or transfer. However, some transactions are complex or require multiple filings, usually when a tract of land is in multiple counties, or a foreign person has acquired separate tracts in multiple counties.

“In this atmosphere of heightened scrutiny of foreign beneficial ownership, companies should ensure that they are not overlooking any compliance requirements with respect to any transaction,” according to K&L Gates. “In addition, companies should also ensure that they are complying with any reporting obligations that are coming into effect as new legislation becomes law.” ■



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

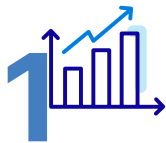
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Partnering in a Down Market Can Be a Winning Strategy



With Order Volume Down, Successful Title Businesses Collaborating With Other Agents in Many Ways to Maintain Revenue

By Aaron Davis

FOR MANY SETTLEMENT SERVICES BUSINESSES, 2023 HAS BEEN A CHALLENGING YEAR.

Although there will certainly be a rebound at some point, the most successful firms and owners have rolled out several new strategies to bolster revenue until then. After all, Fannie Mae forecasted an overall origination volume of \$1.69 trillion this year. It's not the jaw-dropping number we saw in 2021, but many industry veterans can remember years when a forecasted volume of over \$1 trillion was reason for excitement.

The bottom line is that there is business out there, somewhere, for title agents and settlement services firms. But how do you go about finding it?

It's a solid approach to take many of the usual, proven steps we all rely on when a market becomes soft. We're all building or shoring up our relationships with local brokerages and Realtors. We're checking in on loan originators and executives at the regional banks and lenders. And, although it's not something any of us wants to do, we've cut our costs and traded fixed expenses for variable expenses.

However, in especially tough market cycles, those steps may not be enough. We've seen considerable contraction throughout the market already, and capital infusions are hard to come by. Revenue is the lifeblood of any business, and there are no true substitutes.

One proven approach to locating and tapping into real estate volume that may not be taking place in our local markets is partnership, whether through a joint venture or other means. Not every title agency is national in its geographic footprint. Not every firm is positioned for maximum operating efficiency. When revenue is down, it's not easy for most to simply acquire another brick-and-mortar operation in a new market or make a massive investment in operational technology. That's where partnership comes in, and it's what an increasing number of title firms are doing in a variety of ways.

Expanding the Geographic Footprint

It's easy enough to decide to enter a hot market to get a piece of the action. It's also easier said than done. Licensing and state or local regulations can create a huge barrier to entry. The expense of building a new operation or acquiring an existing operation—while quite plausible for those with cash reserves—is generally not what most are looking for when the order count is low. And then, there's the obvious reality that unless an incoming title agent or owner is already familiar with the nuances of a new market or the customs of local brokerages and banks, success is anything but guaranteed for the newcomer.

Another consideration for expanding one's footprint is the recruiting and hiring of quality local talent. Start-ups or new firms tend to attract the available talent, rather than the top talent. More often than not, that talent is available for a reason. When it comes to wooing the best title personnel, a new firm may get one shot to win them over. A firm that's just opened its doors in a new market can get off to a disastrous start if it's built around the wrong person, the wrong team or wrong culture. Partnering with an established local agency with a reputation for good leadership, culture and service can help a firm avoid potential mistakes from the very start.

Whether via joint venture or other forms of less regulated, informal partnership, we're seeing an increasing number of title agencies entering new geographic markets by partnering with firms that are already well established there. Although we're also



seeing some make the effort to enter new markets with affiliated arrangements that forego the participation of a local title agency, relying instead on their banking or realty joint venture partners, there are quite a few potential pitfalls to going that route, not the least of which is the increasing regulatory scrutiny on such ventures.

Better to rely on the experience and expertise of a local firm when partnering to enter a new market. An established local title business should be comfortable with the in's and out's of its home territory. It's also likely they have the resources and experience to assemble a compliant arrangement without rankling local enforcement agencies.

Partnering for Shared Resources

One doesn't need to enter new geographic markets to weather the storm, either. Cutting expenses effectively while improving an operation's effectiveness not only helps margins when times are tough, but also positions businesses to ramp up quickly when order counts start to rise again. After all, a lender isn't going to gradually increase the order count in deference to the title agent who's frantically onboarding new staff. Entering new partnerships also makes great sense for agents who don't have the means or expertise to centralize their operations or trim inefficiencies without harming their core businesses.

There are a number of title businesses out there that have turned to a model that relies on the optimal use of effective technology, staffing and training that aligns with what lenders are seeking (such as digital closings and/or RON, cybersecurity, etc.) and a workflow that relies as little as possible on manual or inefficient processes. Partnering with such a business can lead to immediate benefits, not to mention positioning the incoming partner for success when the market turns.

Keep an Eye Out for These Things

Of course, not every potential partner is right for the title business seeking a partnership. Demonstrated experience is important. Has the potential partner done this before? What were the results? Does that partner have equally tough questions for the inquiring firm? While it's understandable that a business might not want to share every element of its "secret sauce," it's also critical that both partners considering a joint venture or other form of partnership understand how the other works and what each firm values and strives for.

The title industry can be a competitive place—sometimes inordinately so. But in challenging times, there are numerous opportunities to at least have a share of the business that is out there through partnership. But it's important to go about things the right way. Just as a successful joint venture can lead to improved revenue and even new opportunities, a bad arrangement can sink a business or hurt its brand for future potential partnerships. Better to get it right the first time!

AARON DAVIS is the CEO of AMD Enterprises, a conglomerate of mortgage technology, title and e-closing ventures that include Florida Agency Network, Premier Data Services and Network Transaction Solutions. He was appointed to the Board of ALTA's Good Deeds Foundation in 2023. He can be reached at aaron@amd-1.com.



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Underwriters Manage Business Through Down Market



THE HOUSING MARKET HAS ALSO BEEN IMPACTED BY HIGH INTEREST RATES as millions of homeowners have locked into low mortgage rates and are content to remain in their current homes—therefore helping to keep inventory low. Adding another wrinkle, existing home sales receded 20% from a year ago, while new home sales surprised on the upside and increased 20% from a year ago in May.

While the outlook for the housing market remains volatile for the second half of the year, the top four underwriting companies continue to navigate through the down cycle of the market. Here's a recap of how the top four underwriting families fared during the second quarter of 2023.

Fidelity

Fidelity National Financial reported its title insurance segment generated pre-tax earnings of \$233 million during the second quarter of 2023. This compared to \$267 million in pre-tax earnings during the same period a year ago.

"Our second quarter results are a clear testament of our ability to navigate through varying economic cycles and highlight the expertise of our field managers to reduce our expense structure as seen through 2022 and the first half of 2023," said Mike Nolan, Fidelity's chief executive officer. "Our title business is performing

very well and positioned for what could be a challenging second half of the year as mortgage rates remain elevated. As we strive to maximize margins in a given market, we will also continue to manage our business for the long term, providing protection for our policyholders and outstanding service to our customers."

During the second quarter, Fidelity opened 347,000 direct orders and closed 233,000 direct orders. The company opened 443,000 direct orders and closed 278,000 direct orders during Q2 2022.

Fidelity reported it paid \$67 million in claims during the second quarter of 2023. This compared to \$65 million in claims paid during the second quarter of 2022.

"A clear benefit of our financial strength, scale and profitability is our ability to invest in our business through cycles as we further expand our competitive positioning in the industry," Nolan said. "Our inHere platform is an area where we have been investing in

recent years and is quickly gaining traction, having had over 1.4 million users on our platform over the last two years and nearly 90% of our 200,000 real estate professionals active in the last 30 days. We continue to add functionality and content to our inHere platform as we work to drive further adoption and usage across the industry."

First American

First American Financial Corp. reported its title insurance segment generated \$185.7 million in pre-tax income during the second quarter of 2023. This compared to \$240.7 million in pre-tax income during the same period in 2022.

"We posted good results in the second quarter given the continuing market headwinds," said Ken DeGiorgio, chief executive officer at First American Financial. "A seasonal uplift in our business, strong growth in net investment income and a continued focus on expense management enabled us to deliver a pretax title margin of 12.1%."

During the latest quarter, First American opened 174,600 direct orders and closed 128,300 direct orders. This compared to 257,200 opened direct orders and 205,000

closed direct orders during Q2 2022. The company reported it is experiencing the typical seasonal decline in purchase orders with open orders down 1% compared to June.

First American reported \$177.9 million in commercial revenue during the latest quarter. This was down from \$289.5 million during the second quarter of 2022. DeGiorgio said the commercial sector has started to stabilize, but "there is still a high degree of uncertainty concerning the commercial market outlook."

Regarding the commercial sector, DeGiorgio added: "Based on the feedback we are still getting from customers, we expect the transaction activity in the second half of the year will be better than the first, which is consistent with normal seasonal patterns."

First American paid \$34.9 million in title claims during the second quarter of 2023. This was down from \$59.0 million in claims paid during Q2 2022.

During the company's earnings call, DeGiorgio said First American is making progress on the development of Endpoint, an instant title decisioning product for purchase transactions. He expects Endpoint to be deployed in two markets next year. While the company expects to gain efficiency, DeGiorgio said the biggest part of the improvement will be in the customer experience.

"Customers want to know early if there are title issues that are going to need to be resolved, and we are going to be able to indicate to them initially even before an order is placed, whether or not there is going to be a title issue or whether or not we can issue a commitment," DeGiorgio said.

Stewart

Stewart Information Services Inc. reported its title insurance segment generated \$35.5 million in pre-tax income during the second quarter of 2023. This compared to \$93.6 million in pre-tax income during the same period a year ago.

"Our second quarter results improved compared to the first quarter as we moved into the seasonally stronger summer selling season," said Fred Eppinger, Stewart's chief executive officer. "The elevated interest rate environment continued throughout the second quarter as mortgage interest rates reached almost 7%, keeping transaction volumes from increasing as in a normal market."

Stewart opened 85,184 direct orders while closing 60,246 direct orders during the second quarter of 2023. This compared to 103,646 direct orders opened and 84,882 orders closed during the same period a year ago.

On the commercial side, Stewart reported a 38% decline in revenue during the latest quarter. This was driven by a 30% decrease in commercial orders closed and lower average transaction size compared to the second quarter 2022.

During the latest quarter, Stewart paid \$19.8 million in claims. This compared to \$26.4 million in claims paid during the second quarter of 2022. As a percentage of title revenues, Stewart reported title loss expense was 4.2% in the second quarter 2023 compared to 3.5% in the second quarter 2022.

Total employee costs and other operating expenses in the second quarter of 2023 decreased \$47.2 million, or 16%, compared to the prior year quarter.

"Our long-term strategies of creating a stronger and more resilient company remain our primary focus, and I am pleased with our progress on these important initiatives," Eppinger said. "We continue to balance cost discipline with investments in managing our operations in this challenging environment."

Old Republic

Old Republic International reported its title insurance segment generated \$34.7 million in pre-tax income during Q2 of 2023. This compared to \$109.5 million in pre-tax income during the second quarter of 2022.

"Our 2023 results compared to 2022 reflect the economic headwinds continuing to affect the volume of transactions in our market," said Carolyn Monroe, president and CEO of Old Republic National Title Holding Co. "We continue working to manage costs in response to market revenue levels, while keeping a focus on longer-term strategic initiatives."

Old Republic paid \$16.2 million in claims during the second quarter of 2023. This is down from \$29.0 million in claims paid during the same period in 2022. The loss ratio was 3.8% during the latest quarter compared to 3.6% during Q2 2022.

Old Republic reported its commercial premiums were down 37% during the latest quarter compared to the second quarter of 2022. Year-to-date commercial premiums are down 31% over last year.

"While being mindful of market conditions, we continue to demonstrate our commitment to this segment with tools and resources to take advantage of the opportunities available," Monroe said. "Over the last year, we have expanded and transformed our footprint nationwide and have been able to grow our market share in this segment."



Doma Sells Operations in Midwest, Texas

Focusing Strategy on Deploying Instant Underwriting Technology

DOMA HAS SOLD ITS OPERATIONS IN TEXAS, MINNESOTA, WISCONSIN, ILLINOIS AND INDIANA TO TWO DIFFERENT COMPANIES.

Near North Title Group acquired Doma's 30 offices in the Midwest, while Capital Title of Texas LLC purchased the operations in Texas.

In the deal, Near North Title Group will add 100 industry professionals with thousands of years of collective experience onto the team. Near North Title now has nearly 60 offices in six Midwestern states and Florida.

"Our mission at Near North Title Group is to partner with our clients and protect their interests throughout the real estate transaction process," said Dan Fowler, CEO of Near North Title Group. "This acquisition represents a tremendous opportunity for us to extend our reach and enhance our ability to serve clients across the Midwest. We are excited to welcome the talented team from Doma."

Among those joining Near North include Alex Grundhoffer, Doma's national chief operating officer of local branch operations, and Doma managing directors of Minnesota, Wisconsin, Illinois and Indiana.

"The synergies of our collective management team and office locations made Near North the perfect home for our valued employees and clients," Grundhoffer said. "Near North's culture and industry knowledge, especially so given the strong national commercial capabilities, will bring value to our local teams and communities. My team looks forward to being a part of the Near North family."

"These strategic transactions are aligned with our mission-driven go-forward strategy and refined focus on our core underwriting and technology business," said Max Simkoff, founder and CEO of Doma. "Our Texas and Midwest operations have a

track record of providing excellent customer service. We believe we have found optimal homes for our local team members in the branches we have sold."

Capital Title of Texas is a member of The Shaddock Title Companies.

"We are thrilled to welcome the talented team from Doma to the Capital Title Family," said Bill Shaddock, CEO of The Shaddock Title Companies. "Their expertise and deep understanding of the Texas market will be invaluable as we continue to expand our operations and deliver exceptional title and escrow services to our customers. This acquisition strengthens our position as a leading title company in Texas."

In May, Williston Financial Group acquired 22 of Doma's retail title locations and operations centers in Northern and Central California.

In its Q2 earnings release, Simkoff said Doma would unveil a new strategy to ensure its patented technology helps address the home affordability challenge.

"We believe our strengthened focus on deploying our instant underwriting technology on a broader scale, through both licensing our software and working with our independent agent community, will enable us to grow the business in a more capital-efficient manner," he said. "We will focus on licensing our technology directly to several of the largest mortgage originators and secondary market purchasers in the country. We are in discussion with several of these parties regarding a commercial framework that would allow us to bring this model to life at a crucial period."

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* Q2 23' CSAT First American Agency Survey Results, Satisfaction with First American Products and Services, May 2023

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Nevada, Ohio Courts Address Wire Fraud Liability



Buyer Suffers Wire Transfer Fraud Loss, Not Escrow Company

Wheeler v. Clear Title Co., Inc., 2023 WL 2662027 (Nev.App.) (unpublished).

By J. Bushnell Nielson

A BUYER BORE THE LOSS WHEN SHE FELL FOR THE TRAP OF PHISHING WIRE TRANSFER

instructions and wired the purchase money to a fraudster and not the escrow company, the Nevada Court of Appeals held in the case *Wheeler v. Clear Title Co., Inc.* The court also found that the escrow company had no duty to warn the buyer of the risk of wire transfer fraud.

Keith Wheeler bought a house near Las Vegas for his ex-wife Sharon Wheeler to live in and purchase from him when she had saved enough money. In December 2018, Sharon had the money and she and Keith arranged for escrow officer Ela Rose of Clear Title Company Inc. to conduct the escrow.

Rose sent the preliminary title report to both Wheelers. A page appended to the report said that the

the money. Rose did not want to review the written wire confirmation. Instead, Rose checked her escrow account for incoming wires. During their meeting, Keith and Sharon Wheeler signed several documents, including the escrow instructions and the legitimate Clear Title wiring instructions.

That evening, Rose called Wheeler to tell her that the wire still had not been received by Clear Title, which Rose believed was an indicator of a problem. The next day, Rose had Wheeler send her the fraudulent wire instructions. Rose realized that Wheeler had been the victim of a scam. However, it was too late to reverse the wire transfer.

Wheeler sued Clear Title in April 2019. In October 2019, Clear Title made an offer of judgment in the amount of \$20,000. Wheeler did not respond to the offer, so it was deemed rejected.

Clear Title filed a motion for summary judgment in June 2021 after close of discovery. The district court granted Clear Title's motion, and a judgment was entered in Clear Title's favor on all claims asserted in Wheeler's amended complaint.

Wheeler appealed. The court affirmed.

An unusual fact in this case was that Wheeler wired the money before she signed any escrow instructions appointing Clear Title as escrowee. This threw her claims into question, because they were all based on duties of an escrowee. The appeals court said this:

At the outset, we note that the escrow instructions were not signed until 15 minutes after the funds had been transferred to the fraudster. Wheeler provides no authority to support her argument that Clear Title was

An unusual fact in this case is that the plaintiff wired the money before she signed any escrow instructions appointing Clear Title as escrowee.

buyer should contact Clear Title to obtain its wiring instructions. Rose and the Wheelers agreed on a closing date and appointment.

Before closing, Sharon Wheeler got an email from closingfilel2@comcast.net attaching wiring instructions. The email insisted that the money be wired that day to avoid a closing delay. The email used Ela Rose's name, but it was not sent from her email address. The wiring instructions were not on Clear Title letterhead. The name on the bank account listed on the instructions was an individual, not Clear Title.

Wheeler did not call Rose to confirm that she had sent the wiring instructions. Instead, Wheeler stopped at her bank on the way to the closing appointment and wired the money to the fraudulent account.

When Wheeler arrived at the closing, 15 minutes after the transfer, she told Rose that she had transferred

Ohio Court Holds Escrow Agency May Be Liable for Wire Fraud, Remands for Further Proceedings

Conor Hoffman v. Atlas Title Solutions, Ltd., 2023 WL 3580894 (May 22, 2023), --- N.E.3d---, Court of Appeals of Ohio, Third District, Union County

By Stephen Gregory

On the recommendation of the sellers' Realtor, buyer Conor Hoffman and sellers Richard and Stephanie Little agreed to use Atlas Title as the escrow agent and title agent for the all-cash sale of a home in Union County, Ohio. Hoffman and his fiancée Macie McMahon were purchasing the property, but Hoffman was to be the only name in title. Approximately a week prior to the closing, a representative of Hoffman's Realtor told them they would need to wire funds to Atlas at least one day before settlement. Hoffman was informed in that email that "[t]he title company will send you wire instructions in a secure email. Upon receiving your wiring instructions, please contact or have your bank contact the title company above, to confirm wiring instructions." This email followed a text one day prior from Hoffman's Realtor that said "[t]he title company will provide wiring instructions. Be sure to call them to confirm the amount to wire and instructions before you wire any money." In addition, Hoffman received a calendar invitation which included the emails of Atlas' closers, both of which bore the URL of @atlastitlesolutions.com.

Two days before the closing, Hoffman received an email from a person claiming to be one of the Atlas closers identified in the Realtor's email. However, the email address was a Gmail account and did not contain the closer's name as provided previously. All of the details of the closing were accurate, including the amount required. Hoffman called the number provided in the fraudulent email and was assured by an impersonator that it was legitimate. Hoffman wired the funds that day to an account purporting to belong to a real estate company in Cincinnati. (Note: Marysville in Union County is over 100 miles from Cincinnati.)

One day before the closing, Atlas emailed Hoffman the settlement statement and wire instructions in an unencrypted email. That email was caught in Hoffman's spam filter. Closing was held on April 22, 2021, but Atlas did not inform the parties that no funds were received until April 23. By that time, it was too late for the funds to be recovered through banking channels. In July, Hoffman filed his complaint against Atlas (and the Realtors, who were later dismissed), alleging negligence, breach of fiduciary duty and breach of contract. At trial, evidence was introduced that Atlas had known of prior hacking incidents, including incidents involving the same fraudster.

Atlas filed its answer to the petition alleging that it "did not owe a legally recognized duty to protect [Hoffman] from third-parties" and that Atlas "never agreed to act in a fiduciary capacity for the benefit of [Hoffman]." Atlas moved for summary judgment, which was granted by the trial court.

On appeal, the Court of Appeals for the Third District reversed and remanded, finding that there were genuine issues of fact to be resolved by the trial court. Specifically, after a lengthy analysis, the appeals court found that the questions of breach of contract and breach of fiduciary duty required more of an inquiry at the trial court level. (Interestingly, the opinion implied that the outcome may have been different if a lender had been involved in the transaction.)

Relevance to the Title Industry

Cyber fraud is a serious problem for title agents. Real estate is a prime target for fraudsters because of the large sums of money that are available from the unsuspecting and from the insufficiently prepared. Hoffman's expert witness at trial stated that this incident could have been prevented if:

Atlas (1) had adequate procedures for wire transfers in place; (2) had adequate procedures for communicating wire procedures to customers; (3) adequately warned customers about spoofs and how to avoid them; (4) specifically warned [Hoffman and McMahon] that Atlas had been a target by the same fraudster * * *; and (5) promptly advised [Hoffman and McMahon] that the wire had not been received.

Continued on page 28

required to ensure the money was transferred before the escrow instructions were signed. Wheeler also fails to provide any authority to support her implied argument that a contract was formed before the escrow instructions were signed. Since Wheeler has failed to provide authority to support her arguments, we need not consider them.

The court continued, however, saying that even if an escrow had been formed before Wheeler made the wire transfer, her liability theories against Clear Title failed as a matter of law. It said:

Wheeler claims that Clear Title was negligent "because they were [supposed] to work with the buyer in receiving money." Wheeler argues that this means that Clear Title should have told her that the wiring instructions had not been sent to her yet, looked at the wire documents she offered to Rose to determine the instructions were fraudulent, and should have warned Wheeler about the dangers of wire fraud. Escrow instructions define the duties of an escrow agent. Mark Props., Inc. v. Nat'l Title Co., 117 Nev. 941, 946, 34 P.3d 587, 591 (2001). ... The Residential Purchase Agreement, which was incorporated into the escrow instructions, states that Clear Title's duties are limited "to the safekeeping of all monies ... received by it as ESCROW HOLDER." However, the duties that Wheeler imputed to Clear Title are not found within the escrow instructions, and Wheeler provides no other authority that imposes these duties on Clear Title. Accordingly, we conclude that Clear Title only had a duty to safekeep any money that it received directly from Wheeler;

further, that Clear Title did not have a duty to ensure that Wheeler transferred the money to Clear Title regardless of when the escrow instructions were signed.

Wheeler also argued that Clear Title violated an "industry standard" and its own policy by not investigating the wire as soon as Wheeler told Rose about it, in order to uncover the fraud while there was time to reverse the wire. The court held that Wheeler had not identified an industry standard or company policy that Clear Title had violated, or how obeying such standards would have prevented the theft of the money. Importantly, the court said, Wheeler "also fails to provide any authority to show that industry standards create an additional duty for escrow companies." Therefore, it was not required to consider the argument.

The court went further. It said that, even if it considered Wheeler's argument, Clear Title had obeyed Nevada escrow standards. It noted that Nevada law requires an escrow agent to deliver a copy of the escrow instructions to the parties when they are signed. However, the law "does not specify when the wire instructions should be delivered." NAC 645A.220(10). Also, Wheeler had already received the preliminary title report that instructed her to contact Clear Title for the wiring instructions. Therefore, although Clear Title did not send the wiring instructions before the closing appointment, Clear Title complied with Nevada law and had warned Wheeler how wiring instructions would be delivered.

Wheeler also tried to shoehorn her facts into the *Mark Properties* rule that an escrow officer has a duty to disclose facts indicating that one party to an escrow is perpetrating a fraud on the other party. The court said that Wheeler "appears to argue that Clear Title

Ohio Court Holds Escrow Agency May Be Liable for Wire Fraud, Remands for Further Proceedings, cont.

Title agents must take steps to protect themselves and their customers from fraudsters. ALTA provides a guide in its Best Practices, but given the proliferation of attempted hacks, doing more should be in every agent's procedure implementation. The lessons of these myriad misdirected funds cases should be that the facts and circumstances, and each state's laws and decisions, render outcomes unpredictable. Better for agents to avoid lawsuits based on fraudulent wiring instructions by adopting practices that, as much as possible, ensure that clients deliver closing funds to the correct accounts.

Stephen Gregory is a member of the bar in North Dakota, Ohio, Virginia and West Virginia. He is active in the Virginia Land Title Association and the Ohio Land Title Association. He can be reached at dirtlawyer75@gmail.com.

allowed the fraud to occur by taking no affirmative steps to avoid the fraud until it was too late." The court observed that Mark Properties also held that "escrow agents do not have a duty to investigate or to discover fraud, thus the facts known by the escrow agent must present substantial evidence of fraud." The court said that the facts in this case "did not present substantial evidence of fraud." It summarized the testimony as follows:

Wheeler told Rose that Wheeler had wired the money to Clear Title before the closing appointment, but this does not present substantial evidence of fraud. Rose testified during her deposition that she thought Wheeler received the wire instructions from either Rose's assistant or the lender and did not find it shocking that Wheeler had already wired the funds before the closing. Additionally, Rose checked the wire board throughout the day, in accordance with Clear Title's procedures. This evidence does not present substantial evidence of fraud; therefore, we conclude that Clear Title had no duty to disclose the potential fraud to Wheeler, especially since Clear Title did not suspect that fraud had occurred.

Wheeler's most tortured argument was that "Clear Title had a duty to receive the funds and breached that duty when it failed to receive the funds." The court found no such duty, saying:

As discussed above, the escrow instructions do not include a duty to receive the funds. Instead, Clear Title was required to safekeep the money that it received. Additionally, Clear Title was only empowered to perform the acts in the residential purchase agreement to the extent that the terms and conditions were within the control of the escrow. As demonstrated by the facts in this case, Clear Title had no control over receiving funds. It can only receive funds that are sent to it, and it has no control over the parties sending the funds. This case is a very unfortunate situation in which Wheeler was duped by a clever fraudster without Clear Title's involvement. Therefore, we conclude that Clear Title had no duty to receive the funds from Wheeler, since she did not send them any funds.

The court disposed of Wheeler's breach of fiduciary duty claim using the same analysis.

Wheeler also pressed a hot-button issue, by arguing that Clear Title was negligent by not giving her an advance warning about the risk of wire transfer fraud. The court both rejected and sidestepped that claim, saying:

Wheeler's negligence claims rely on ... her assertion that Clear Title had a duty to warn her about the potential for wire fraud. But at the time of the fraud, Clear Title did not have a special relationship with Wheeler—especially since the escrow instructions were not signed until after Wheeler wired the money it also did not undertake an obligation to protect her, nor did its conduct increase the risk that Wheeler would become a victim of fraud. As Wheeler provides no authority for her contention that Clear Title had a duty to warn her about wire fraud, we conclude the district court did not err when it granted Clear Title's motion for summary judgment because the duty element of negligence has been negated.

The court also held that the fraud itself was the superseding cause of Wheeler's loss, and that Clear Title did not have the kind of special legal relationship with Wheeler that required it to protect her from the fraud.

The appeals court stated that the trial court properly dismissed other claims based on the economic loss doctrine, including her claim of negligent supervision and retention of employees. The appeals court also upheld the dismissal of Wheeler's claim for intentional infliction of emotional distress. It found no outrageous conduct by Clear Title or Rose to support that claim.

This is a very good decision concerning wire

As demonstrated by the facts of the case, Clear Title had no control over receiving funds. This case is a very unfortunate situation in which the plaintiff was duped by a clever fraudster.

transfer fraud that occurred under somewhat unusual facts. The rulings concerning the nexus between the Mark Properties duty to disclose known fraud and wire transfer fraud should be especially useful and instructional.

J. BUSHNELL NIELSON, editor of *The Title Insurance Law Journal*, is a shareholder in Reinhart's Litigation and Real Estate practices. He can be reached at bnelsen@reinhartlaw.com. A subscription to the journal can be purchased at alta.org/title-insurance-law-journal.

Past ALTA President Mike Currier Passes Away

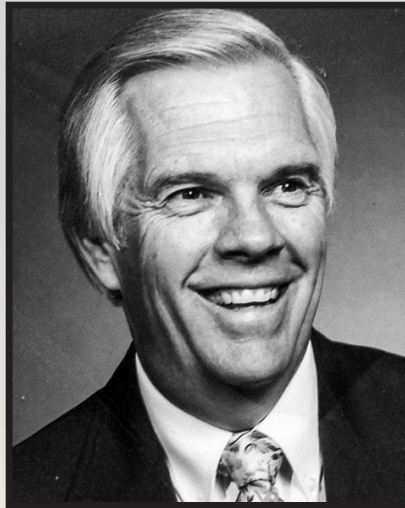
ALTA PAST PRESIDENT MIKE CURRIER PASSED AWAY UNEXPECTEDLY AUG. 8 IN HIS HOME IN CARLSBAD, N.M.

Currier served as ALTA's 1994-95 president. He also was the 1981-82 president of the New Mexico Land Title Association (NMLTA).

During his time as ALTA president, Currier believed more needed to be done to educate legislators and regulators about title insurance. He encouraged more engagement by title professionals at the federal and state level to advocate for the industry.

Currier was introduced to the title industry while in high school. He made copies for abstracts with a "shaker box" in the darkroom. As technology progressed, he stuffed microfilm into jackets. After graduating college, a family acquaintance, Billy Vaughn, offered Currier a job with Lawyers Title Insurance Co. in Texas. Currier worked eight years at Lawyer's Title before joining his family at Guaranty Title.

Currier's grandfather, George, opened Currier Abstract Co. in 1939 in Artesia, N.M. Currier's father, Chili, expanded the business in 1969 with the purchase of Guaranty Title Co. in Carlsbad. Mike Currier took over management of the Carlsbad office in 1992. George served as NMLTA president in 1944-45, while Chili served as the 1954-55 president. The Curriers are the only family to have three generations serve as NMLTA president.



Currier was known in the industry for his quick wit and love of golf. Parker Kennedy, who preceded Currier as ALTA president, said the two became good friends while serving together on the ALTA board and attending conferences.

"Mike was an exceptional title person and a true advocate for the entire industry—for underwriters and agents alike," Kennedy said. "Sherry (Kennedy's wife) and I had lots of fun with Mike and his wife, Linnie, for many years. He called us every year on our anniversary without fail for the last 15 years. We will miss him very much. He was a great friend."

Currier was preceded in death by his wife in 2012. He is survived by a daughter, Missi, who joined her parents at many ALTA events.

Anne Anastasi, ALTA's 2010-11 president, was recruited years ago to become more involved in ALTA by Currier.

"Mike was enthusiastic about everything," Anastasi said. "He was loyal and the very essence of life itself. Mike was a sought-after emcee for events throughout New Mexico. He was a great man who was respected in business and gave back to the community."

Anastasi remembers Currier riding down the ballroom aisle on a Brahman bull to get to the stage and give his presidential speech during the 1994 ALTA Annual Convention. At the same conference, Currier's good friend Roger Staubach, who played quarterback for the Dallas Cowboys for 11 seasons, served as the keynote speaker. Currier lost out to Staubach to be the starting quarterback for the New Mexico Military Institute their freshman year.

Mark Bilbrey, ALTA's 2004-05 president, called Currier an incredible advocate and supporter of the title industry.

"His passion, leadership and commitment helped guide ALTA through some very challenging times," Bilbrey said. "Mike's love for our industry was only exceeded by his love for his family. He always had a smile on his face and would make sure you did too. He was my dear friend and partner on many adventures."

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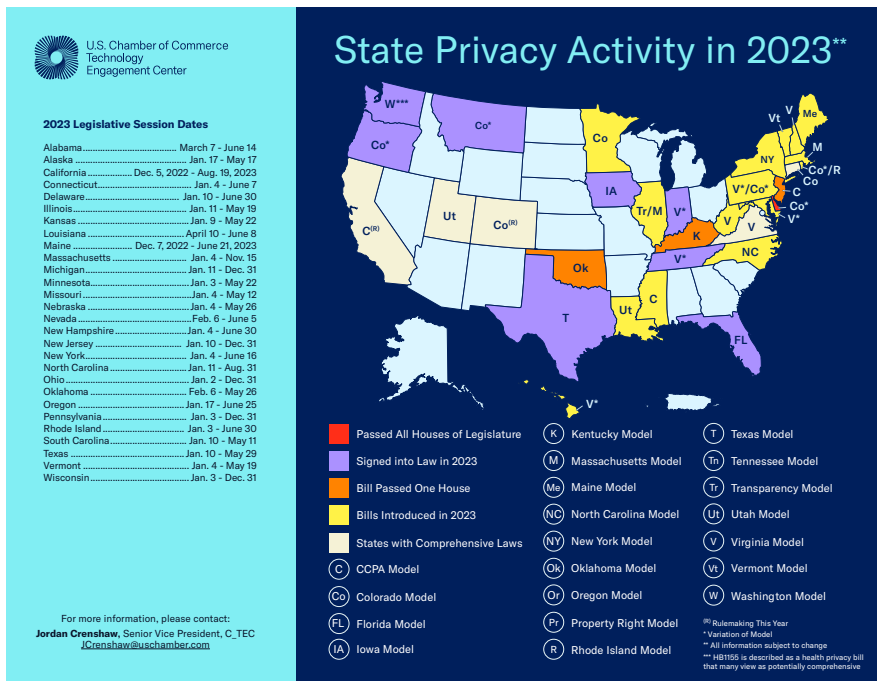
Oregon Joins Growing List of States to Pass Comprehensive Data Privacy Law

Oregon joined 12 other states to pass a comprehensive data privacy law. Gov. Tina Kotek signed the Oregon Consumer Privacy Act (OCPA) into law on July 18. It goes into effect July 1, 2024. Oregon's legislation is modeled on the Virginia Consumer Data Protection Act (VCDPA).

The law contains an exemption for personal data subject to the Gramm-Leach-Bliley Act (GLBA), along with an exemption for publicly available information. ALTA has held that any comprehensive data privacy legislation should include an exemption for entities subject to the GLBA. Since 1999, this federal law has strictly limited financial institutions' use and sharing of customers' personal information. Additionally, financial institutions are required to assure the security of this information and provide comprehensive disclosures to consumers.

OCPA applies to businesses that conduct business in Oregon or provide products and services to residents of Oregon. It also applies to business that control or process the personal data of either of the following:

- Consumers and/or devices linked
- Consumers numbering 25,000 or more, while deriving 25% or more of the



to consumers numbering 100,000 or more, other than personal data controlled or processed solely for the purpose of completing payment transactions.

business's annual gross revenues from selling personal data.

There is no revenue threshold or small business carveout. Like Virginia, the OCPA does not include B2B or employee data.

Stavvy Acquires Servicing Tech Company

Stavvy has acquired servicing technology company Brace to provide a more streamlined experience for servicers and homeowners.

With the acquisition of Brace, Stavvy said servicers and homeowners looking for mortgage assistance will have access to an intuitive,

streamlined platform that allows them to interact on their terms, fostering increased transparency and improved operational efficiencies. The combined services provide an end-to-end digital experience for homeowners and servicers. It also addresses

the longstanding concerns of the Consumer Financial Protection Bureau around servicers offering better and faster avenues for early resolution, rather than relying on antiquated phone and mail processes.

"Our unified team of industry experts combined

with research and investments in generative AI and customizable workflows positions Stavvy to independently reduce the need for antiquated mortgage processes, revolutionizing the experience for all stakeholders involved," said Kosta Ligris, CEO and founder of Stavvy.

RTP Network Expands Request for Payment Availability

Using the Request for Payment (RfP) capability on The Clearing House's RTP network, payment requests can now be sent through secure bank channels. In turn, payments can be received from consumers and businesses.

Several of the RTP network's financial institution participants now offer RfP over the network, providing billers and their customers a more streamlined way to request and make payments.

RfP puts payers in control of the transaction, allowing them to review the RfP and decide whether to pay or decline it. A payer can send an RTP payment in response to the RfP exactly when they want or, depending on the financial institution, schedule the payment for a future date. The payment happens in seconds over the RTP network with the biller receiving access to immediate and irrevocable funds, and the payer receiving immediate confirmation that the biller has received their payment.

Bank of America, BNY Mellon, Citi, Fifth Third, PNC Bank, U.S. Bank and Wells Fargo are among the RTP participants offering RfP capabilities. Many other financial institutions, such as Bridge Community Bank and North American Banking Co., have also received certification to send RfP messages on the RTP network. Numerous technology providers, including FIS, Fiserv, Jack Henry and Open Payment Network, have received certification to provide Request for Payment to their financial institution customers that are RTP participants.

"Expanding RfP usage across financial institutions is an exciting step toward wider RTP adoption," said Connor Coughlin, chief commercial officer of APEX Fintech Solutions Inc. "Through the Clearing House's RTP network and with U.S. Bank as (Apex's) bank partner, we can help eliminate ACH return risk for retail broker-dealers and their investors.

As the first company to offer real-time instant digital account opening and funding, Apex understands our modern retail investors and their need for speed. No matter what time of day, once RfPs are approved, there are no questions about when funds are coming or going. This is all part of Apex's mission to create a frictionless experience for every investor."

Nevada Passes Law Protecting Homebuyers From Predatory Contracts

Nevada Gov. Joe Lombardo recently signed legislation that includes provisions protecting homeowners from the predatory practice of filing unfair real estate fee agreements in property records, known as Non-Title Recorded Agreements for Personal Services (NTRAPS).

SB 355 makes NTRAPS unenforceable. Other states to pass versions of bills that address NTRAPS include Alabama, Colorado, Florida, Georgia, Idaho, Iowa, Maine, Maryland, North Dakota, Ohio, Tennessee, Utah and Washington.

ALTA, the AARP and the Nevada Land Title Association (NLTA) applauded Nevada for passing the legislation.

SB 355 follows the objective of similar bills introduced across the country to provide a remedy for existing NTRAPS while also discouraging these types of unfair practices impacting homeowners.

"I would like to thank Assemblywoman Heidi Kasama for assisting NLTA with the passage of this important legislation," said Sylvia Smith Turk, division president for Stewart Title Co. and past president of NLTA. "NLTA members are proud to support and sponsor legislation to protect property rights for Nevada homeowners."

The new law:

- Makes NTRAPS unenforceable by law.
- Restricts and prohibits the recording of NTRAPS in property records.

- Creates penalties if NTRAPS are recorded in property records.
- Provides for the removal of NTRAPS from property records and recovery of damages.

Settlor Launches Next Generation Portal

Settlor launched a new one-stop portal for customers to access transaction details, such as contact information for all parties, closing details and documents.

Accessible from any device, BaseCamp allows customers to place title orders for any product offered by the title company. Coming soon, the next release of BaseCamp will include the ability to request a rate quote, create a seller's net sheet, view transaction progress via a status tracker and more.

"Featuring a modern and intuitive design, BaseCamp is the singular destination for agents, buyers, sellers and lenders to quickly and safely access information about their transactions and place title orders," said John E. Freyer Jr., co-founder and president of Settlor.

A cloud-based solution, Settlor leverages more than 30 years of transactional experience to deliver a trusted solution that is scalable, secure and highly customizable. Established as a standalone company in 2021, Settlor is currently used by more than 1,000 users in multiple states across the West and Midwest.

"Settlor is a vital partner and an integral part of our ongoing success," said Craig Burns, CEO of Security 1st Title. "Settlor's support and responsive collaboration have been critical in transitioning our TPS platform. From the ability to access Settlor from anywhere on any device, to customizing workflows across departments and locations that help us take better care of our customers, we could not be more excited about our future with Settlor."

Flying S Title & Escrow Expands Montana Footprint

Flying S Title & Escrow has acquired Wibaux County Abstract Co. in Wibaux, Mont.

Wibaux County Abstract has been family owned and operated since 1919.

“We would like to thank our customers, business partners, real estate agents, lenders, builders, and attorneys for putting their trust in Wibaux County Abstract Company,” said Bill and Lori Franks, owners of Wibaux County Abstract Co. “We have built a great relationship with Mel and her team at Flying S over the years and are grateful that this acquisition has come to fruition.”

Melissa Fohl, vice president and county manager of Flying S Title & Escrow in Glendive, Mont., added, “We look forward to bringing a ‘whatever it takes’ approach to our Wibaux County customers. Bill and Lori have placed great confidence in us, and we intend to provide the same quality service that the people in Wibaux County have come to expect.”

Title Financial Corp., the parent company of Flying S Title & Escrow, is a family-owned and independent company operating since 1905.

FTC Dismisses Lawsuit to Block Black Knight, ICE Merger

Black Knight Inc. and Intercontinental Exchange Inc. (ICE) announced Aug. 7 they reached an agreement with the Federal Trade Commission (FTC) to drop a federal lawsuit seeking to stop the merger between the two companies.

The joint stipulation dismisses the federal court complaint and dissolves the temporary restraining order that was previously in place, allowing ICE, Black Knight and the FTC to continue working toward a final settlement agreement

resolving the FTC’s challenge to the acquisition.

ICE and Black Knight agreed with the FTC to refrain from closing the transaction until 10 days after they sign a consent order.

“FTC staff have made significant progress towards a potential resolution regarding the commission’s concerns over ICE’s acquisition of Black Knight,” FTC spokesperson Victoria Graham said in a statement. “The commission looks forward to finalizing this resolution with the parties that will protect and preserve competition.”

The agreement follows the announced sale of Black Knight’s Empower and Optimal Blue businesses to rival Constellation Software Inc.

In May 2022, ICE announced a \$13.1 billion deal to acquire Black Knight. However, the FTC was concerned the deal would give ICE too much control over the U.S. mortgage technology market.

ICE has completed several deals in recent years to expand beyond its core business. In 2019, it bought Simplifile for \$335 million. In 2020, ICE purchased mortgage technology platform Ellie Mae for \$11 billion.

Closinglock Launches New Payment Solution Powered by J.P. Morgan

Closinglock has partnered with J.P. Morgan to provide a new digital payments solution to the real estate industry.

The new payments platform enables homebuyers, sellers, lenders and agents to send earnest money, cash-to-close and any other payments quickly and safely for their real estate transactions.

According to Closinglock, funds are securely transferred to the escrow account and are compliant with good funds laws in all states. Users receive instant payment verification, can track funds in real-time and utilize Closinglock’s

security throughout the entire real estate transaction.

The most common form of wire transfer fraud in real estate occurs when the homebuyer sends funds to the wrong escrow account. Closinglock said its new payments solution helps prevent fraud in these instances because homebuyers no longer have to deal with wire instructions, account numbers or deciphering fraudulent emails.

“This payments solution is the silver bullet our industry has been looking for,” said Andy White, CEO of Closinglock. “The inbound wire fraud issue that has plagued our industry and cost homebuyers billions of dollars is finally being solved.”

The solution supports all U.S. banks and works with wire and Real-Time Payment (RTP) rails. Settlement companies receive either a wire transfer or an RTP credit depending on their bank and location.

“We’re proud to work with Closinglock on this game-changing payments solution that will help their customer base,” said Frank Medrano, managing director for J.P. Morgan Commercial Banking’s Payments Banking Group. “Payments fraud, especially in real estate, is on the rise in today’s environment, and we’re glad to provide and support a solution that’s helping solve this problem.”

Tallent Title Group Partners With Tennessee Title Services

Tallent Title Group and Tennessee Title Services formed a partnership to deliver enhanced title services to clients in the Knoxville, Tenn.

Tallent Title Group has served the Knoxville market for over 15 years, while Tennessee Title Services has operated in Tennessee since 2008.

By joining forces, Tallent Title Group and Tennessee Title Services aim to

leverage their individual strengths and expand their combined service offerings. The partnership will enable both companies to streamline operations, enhance efficiency and provide a higher level of service to their customers.

“We are thrilled to enter into this strategic partnership with Tallent Title Group,” said Josh Terry, partner in Tennessee Title Services. “Together, we will have the opportunity to further enhance our services, strengthen our market presence, and solidify our position as industry leaders in the Knoxville area.”

InspectHOA Introduces Mortgage Payoffs Solution

InspectHOA introduced a new mortgage payoffs solution that leverages a database comprised of mortgage lenders nationwide.

According to InspectHOA, each lender’s ordering process is incorporated into the system, which assigns the order date based upon the closing date to ensure the payoff is valid at the time of closing. Authorization is only requested if necessary and, in situations where a closing is postponed, the ordering date is automatically pushed back as well.

“InspectHOA strives to be the premier provider of multiple streamlined title and closing processes,” said Anton Tonev, co-founder of InspectHOA. “We’re using a combination of AI technology, robust and continuously updated databases and a team of professionals proficient with the entire settlement process to help title agents streamline their operations. The mortgage payoffs solution clears yet another traditional chokepoint in the title agency workflow, allowing employees to spend more time with customers, providing a superior customer experience, leading to higher referral rates and increased market share.”

Kensington Settles No-Poach Allegations

Kensington Vanguard National Land Services LLC became the latest title company to settle allegations it entered into no-poach agreements in New York, according to the state’s attorney general’s office (OAG).

An investigation by the OAG alleged Kensington and its title insurance underwriters entered into illegal no-poach agreements indicating they would not solicit each other’s employees. This reduced competition and negatively impacted wages and opportunities for workers, according to the attorney general. Kensington agreed to terminate any existing no-poach agreements, pay the state \$1 million and cooperate with OAG’s ongoing investigations in the industry. The title company, which cooperated with the attorney general’s office, didn’t admit or deny the findings.

The OAG’s investigation concluded that Kensington entered into no-poach agreements with its underwriters, and that these agreements effectively reduced competition for employees.

According to the Assurance of Discontinuance, for 10 years Kensington 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 its underwriters to enter into or enforce a no-poach agreement (unless permitted by the assurance).
- 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.

The New York attorney general previously settled similar allegations

with Fidelity National Financial, Stewart Title Guaranty Corp., Old Republic Title Insurance Co., AmTrust and First Nationwide.

Investors Title Implements CloudMoyo to Modernize Digital Strategy

North Carolina-based insurance company Investors Title has partnered with CloudMoyo to improve the contract management process.

Investors Title said the implementation of CloudMoyo will transform its contract intelligence journey with various integrations as well as a higher level of risk mitigation with new risk assessment capabilities built into the Icertis Contract Intelligence (ICI) platform.

“The CloudMoyo development and implementation team provided Investors Title an exceptional implementation experience,” said Mike Aiken, senior vice president, compliance officer and senior counsel of national markets at Investors Title. “The team was both knowledgeable and responsive in configuring the system to meet our unique design requirements. The collaborative approach employed by CloudMoyo led to multiple efficiency gains in the workflow and contract management process. We also engaged the Adoption and Value Acceleration (AVA) support team post-deployment. AVA has proven to be an invaluable resource in system adoption and enhancement as our business needs evolve.”

Recent Integrations and Partnerships

- **SoftPro** has integrated its SoftPro Banking platform with **Fifth Third Bank National Association** for managing

wire transfers. The integration will also support the delivery of Positive Pay files between SoftPro users and Fifth Third Bank.

- **Payload** has partnered with **AccountTech**, a real estate back-office accounting software solution provider for brokers, to improve the process of sending earnest money payments. The integration of Payload into AccountTech's Darwin platform will streamline and automate earnest money payments, providing real estate professionals the ability to replace legacy check and wire payments with a secure and efficient digital experience.
- **Doma Title Insurance Inc.** has added digital closing solution provider **Stavvy** to its AgentMarketplace vendor partnership program. Stavvy will offer its e-closing solutions to Doma's independent and affiliated title agent and attorney customers nationwide. Stavvy offers several digital closing options including eSign, remote online notarization (RON) and in-person electronic notarization (IPEN).
- **Snapdocs** launched a new integration between its **Digital Closing** and **Notary Scheduling** platforms. With Connected Closings, according to Snapdocs, customers can reduce closing times by at least a day and a half. Snapdocs also said settlement companies can return scanbacks two times faster by eliminating manual tasks and borrowers electronically sign documents prior to the closing appointment more than 90% of the time.

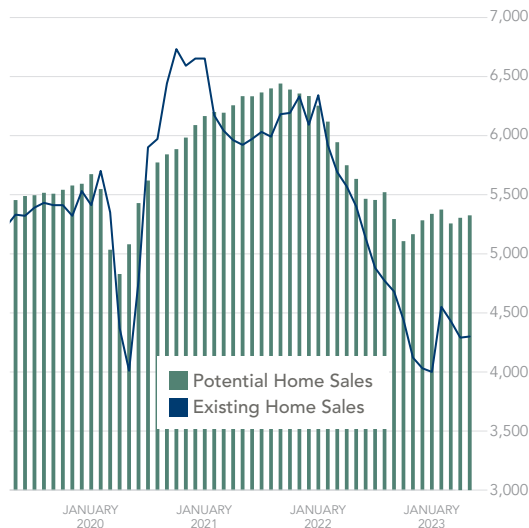


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If you have information you'd like us to consider for TiTLE News, send company announcements to communications@alta.org.

Housing Market Potential

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



4.30 SAAR
Existing Home Sales

5.32 SAAR
Potential Home Sales

-19.2%
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

May 2023

\$348,985
House-Buying Power

-9.0%
Year-Over-Year

Where House-Buying Power is Strongest

Top States and Markets

- | | |
|--|---|
| 1 Massachusetts
\$497,813 | 1 San Jose, CA
\$713,992 |
| 2 New Jersey
\$496,734 | 2 San Francisco, CA
\$658,967 |
| 3 Hawaii
\$480,072 | 3 Washington, DC
\$614,337 |
| 4 Maryland
\$476,105 | 4 Boston, MA
\$529,978 |
| 5 Rhode Island
\$456,914 | 5 Salt Lake City, UT
\$510,832 |

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

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JACK RATTIKIN III
ALTA president

plays Ethan Hunt, an agent of the Impossible Missions Force responsible for stopping enemy actions and preventing global disasters.

The title insurance industry isn't in peril, but there are threats to our business. Each summer, ALTA's Board of Governors meets to develop the strategic priorities for the next year that will position our members for success.

This year, we focused on championing the title insurance industry and combating regulatory threats, promoting title insurance as the best way to protect property rights, and succeeding through adaptation and innovation. We plan to unveil the 2024 strategic priorities during ALTA ONE (Oct. 10-13 at The Broadmoor in Colorado Springs, Colo).

During ALTA ONE, your mission—should you choose to accept it—is to learn how to protect the title insurance industry from outside forces. Between the reemergence of title insurance alternatives, continued difficult economic conditions and guarding against mission creep by Fannie Mae and Freddie Mac, it feels like the title industry is in the middle of a high-stakes mission at ALTA ONE, we will help you discover big, innovative ideas that will help us safeguard our customers and uncover a path forward for our businesses.

Peter Sheahan, founder of Karrikins Group, will speak during the first Omni Session on Oct. 11 about how you can be true to your purpose, do work that matters and solve higher-order problems. Sheahan is the author of seven books and has helped companies such as Apple, Chick-fil-A, DeBeers and AT&T understand that an organization will only go commercially where its leaders first go personally.

Between innovations like artificial intelligence and automation and the daily flood of new apps, gadgets and digital tools, it's easy to get lost in how quickly and profoundly our world is changing. During the Omni Session on Oct. 12, Rahaf Harfoush will explore what it means to exist in a world where human characteristics are being replicated by machines and examine how technology is weaving itself into the social fabric of our lives. Harfoush is the executive director of the Red Thread Institute of Digital Culture and teaches "Innovation & Emerging Business Models" at Sciences Politique's school of Management and Innovation in Paris.

Terry Bradshaw, a four-time NFL Super Bowl champion and pro football Hall of Famer, will round out our Omni Session speakers on Oct. 13. A winner on and off the field, Bradshaw will share his strategies for maintaining success through persistent self-improvement. The former NFL quarterback will help you think in new ways about sacrifice, pain, competition and adversity.

I hope you choose to accept the mission and join me, the ALTA Board of Governors and ALTA staff in protecting our industry and property rights. I look forward to seeing you at the fabulous Broadmoor Hotel in beautiful Colorado.

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