

How GSE  
Guidance Updates  
Impact  
the Title Industry

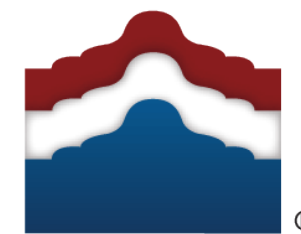


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# TODAY'S FEATURED SPONSOR



# The Rundown

- Welcome and Intro Speakers: Chris Morton, ALTA SVP Public Affairs
- RON, RIN & Everything in Between: The latest GSE guidance on non in person notarization
- Limited Powers of Attorney
- Basic Title Coverage Requirement Reminder
- Questions



# Today's Speakers

## Panelists:

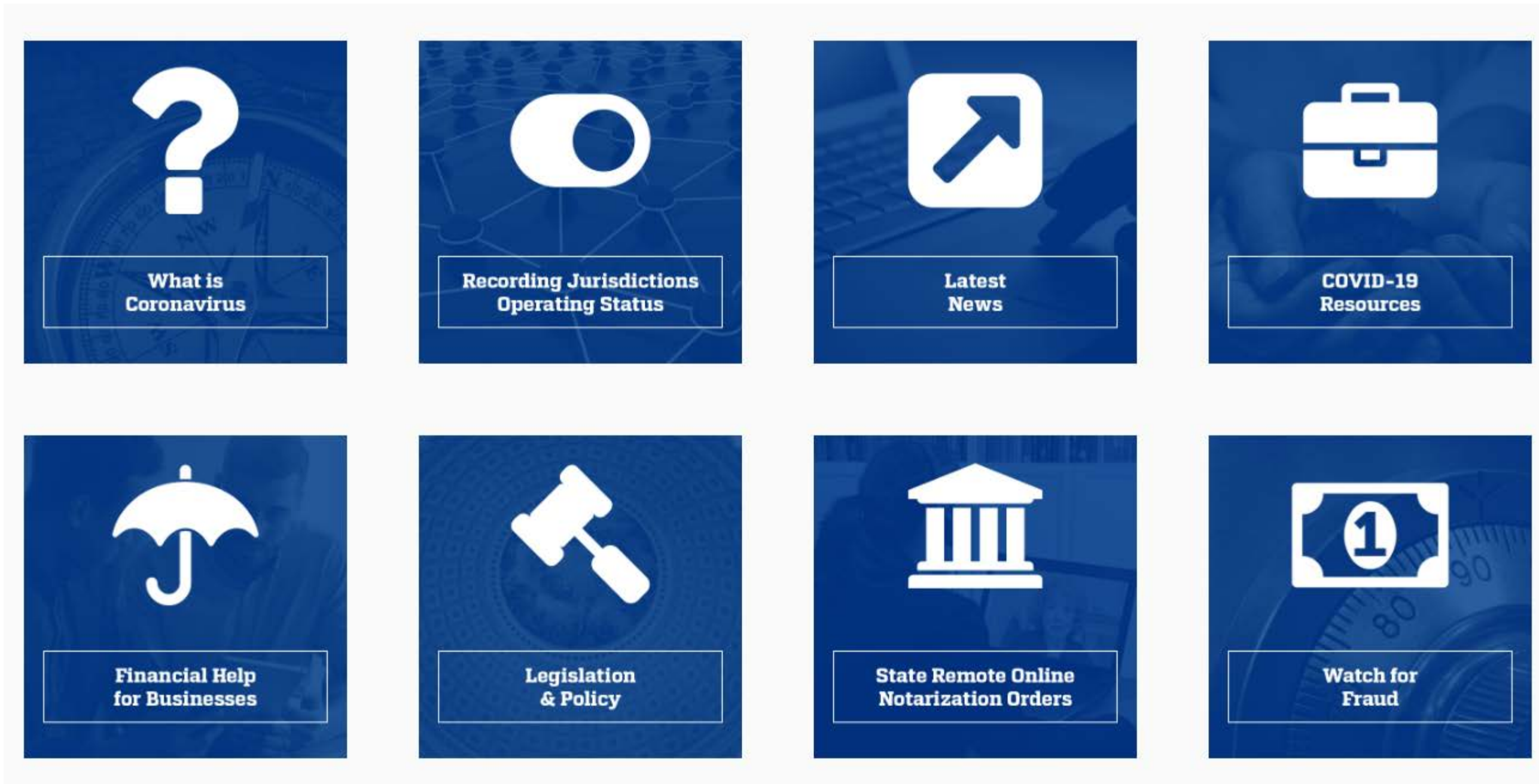
- John Valdivielso | Associate General Counsel | Freddie Mac
- Jim Newell | Managing Associate General Counsel | Freddie Mac
- Jon Breeding | Insurance Policy Manager | Freddie Mac
- John D. Burley | Associate General Counsel | Fannie Mae
- Brooke Adams | Associate General Counsel | Fannie Mae
- Steve Gottheim | Senior Counsel | American Land Title Association

## Moderator:

- Christopher Morton | Senior Vice President of Public Affairs | American Land Title Association



# ALTA COVID Resources Center



[www.alta.org/coronavirus](http://www.alta.org/coronavirus)



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# Remote Online Notarization



# What is a Remote Online Notarization

## Remote Online Notarization

- The authentication of a signature for an electronic record by a notary using audio visual technology where
  - the documents are being signed electronically
  - the document is tamper-sealed electronically and
  - the notarial seal is being applied electronically



# What doesn't count as a RON

- **Emergency Video Notarization, Remote Ink Signed Notarization, etc.**
  - Where the notary use Facetime™ or Skype™ to watch someone sign paper documents that are mailed, picked up, etc.
- **Keep in mind – RULONA contemplates a Paper Remote Online Notarization** where the notary uses multi-factor authentication, but the person wet signs paper documents that are mailed, picked up, etc.





# Pre COVID GSE RON Requirements

- The notarization is performed in accordance with and is legally valid under the laws and regulations of the state in which the notarization is performed, at the time it was performed; and
- If the electronic notarization is a remote notarization, the following additional requirements must be met:
  - the notary public is licensed and physically located in the state where the notarial act occurred and, where required by law or regulation, is specifically licensed to perform electronic notarizations;
  - the laws and regulations of the state in which the mortgaged property is located either expressly permit the use of remote notarization (such as Virginia and Montana) or expressly accept remote notarizations performed out-of-state in accordance with the laws of the state in which the notarial act is performed;
  - the mortgage loan is not a Texas Section 50(a)(6) loan; and
  - if the notarized document is a security instrument or an amendment to a security instrument, the remote notarization must comply with the standard GSE title requirements

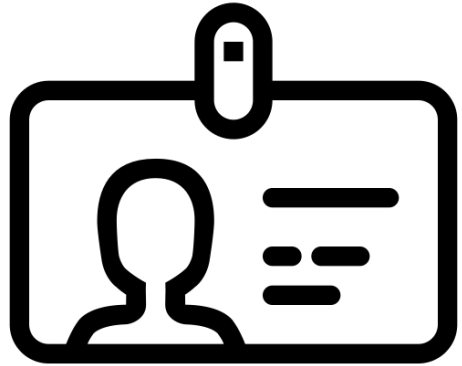


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# What's New



# Minimum standards:



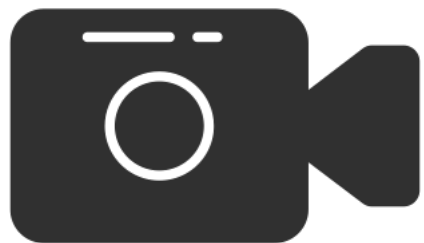
Two-factor identity authentication:

- including using a government-issued photo ID that has a signature, credential analysis and identity-proofing



Tamper Evident Sealing:

- (A) prevent interference with the authenticity, integrity and security of the notarial ceremony or corruption or loss of the recording of the same, and
- (B) protect the communication technology, electronic record and backup record from unauthorized use;

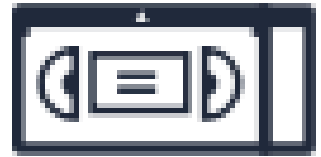


recording of the notarial ceremony:

- State law requirement or minimum 7 years



# Additional Requirements



- The **lender** must maintain (or have access to) the recording of the notarial ceremony for the **life of the loan**.



- The **county recorder** in the state and county where the property is located must **accept the remotely notarized document for recording**.



- The title insurance company may not **take any exception** for the remotely notarized loan.



- Lenders **may not require** a borrower to use remote notarization and must have other notary options for borrowers available.



# States You Can Use RON

Alabama	Hawaii	Michigan	North Carolina	Utah
Alaska	Idaho	Minnesota	North Dakota	Vermont
Arizona	Illinois	Missouri	Ohio	Virginia
Arkansas	Indiana	Montana	Oklahoma	Washington
Colorado	Iowa	Nebraska	Oregon	Wisconsin
Connecticut	Kansas	Nevada	Pennsylvania	Wyoming
Delaware	Kentucky	New Hampshire	South Carolina	
District of Columbia	Louisiana	New Jersey	South Dakota	
Florida	Maryland	New Mexico	Tennessee	
Georgia	Massachusetts	New York	Texas	



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# What About Notes?

- **Can a borrower electronically sign a promissory Note that is not an eMortgage?**
  - No. A “paper” promissory Note may only be wet-ink signed due to restrictions of applicable law. Only eMortgage related Notes may be electronically signed.
- Lenders using eNotes must use an electronic note vault that:
  - integrates with the MERS eRegistry and MERS eDelivery;
  - allows systems integration among the servicer, GSE, and MERS; and
  - can distinguish between the Authoritative Copy of the eNote and other copies.
  - Prevents unauthorized viewing of the most sensitive data and documents through restricted access



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# FAQs



- **Do the GSEs permit Remote Online Notarization (RON) on loans that include wet-ink signed promissory Notes (i.e. non-eMortgages)?**

Yes. Loans closed through the RON process can include either wet-ink signed promissory Notes (i.e. non-eMortgages) or electronically signed Notes (i.e. eMortgages). Sellers can deliver loans with electronically signed Notes only if they are approved to deliver eMortgages.

- **GSEs require Sellers to maintain the recording of the notarial ceremony for the life of the loan. Does this mean that the Sellers are responsible to obtain a copy of the recorded notarization session and retain it in their files for the life of the loan?**

A GSE is not prescribing whether the Seller must obtain a copy and store it or if the Seller can have a Remote Online Notary technology provider store it for them and provide access to the Seller. Regardless of the storage method chosen, the Seller is responsible to ensure they can obtain the recording of the notarial ceremony, upon our request, for the life of loan.








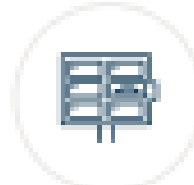

**Do guidelines permit loan closings in which the notary public a) witnesses the borrower wet-ink signing of loan documents remotely (via Zoom, Skype, etc.) and b) receives the borrower's signed documents via FedEx/UPS/USPS to complete the notarization?**

- Guides do not restrict this process as long as:
  - the notary that is licensed in that state is comfortable notarizing documents signed through such process,
  - it is consistent with applicable state law,
  - and the title insurance company provides title insurance on such loans without any caveats/restrictions.
- If the process is only enabled pursuant to a temporary executive order of a state's governor, the process would not be acceptable upon expiration of that Executive order.



# RIN Job Aid

**For the purposes of illustration only, a typical RIN may be as follows:**

1. the paper closing package is delivered to the borrower, 
2. the notary examines a government-issued photo identification using the audio-video technology, 
3. the notary uses the audio-visual technology to witness the borrower ink sign the document, 
4. the borrower returns the document to the notary (via postal mail, delivery service, or in person), and 
5. upon receipt of the package, the notary physically applies his/her notarial seal or stamp to the loan documents. 



# Consider Best Practices

- Review of a government-issued photo ID that has a signature via two-way audio video technology and capture of such photo ID via a photocopy or other electronic image;
- System measures to:
  - 1) prevent interference with the authenticity, integrity and security of the portions of the notarial ceremony that are conducted via the audio-video technology, and
  - 2) protect the electronic record and backup record from unauthorized use;
- The notary performing the RIN should keep a backup of the electronic record;
- Recording of the portion of the notarial ceremony conducted via the audio-video technology with storage for the minimum period required by applicable laws or if no period is specified in the applicable law, for seven years; and
- The lender should maintain (or cause to be maintained) the recording of the portions of the notarial ceremony conducted via the audio-video technology for the life of the loan





Power of Attorney

# Pre COVID

- Under their guides, both GSEs permitted the use of POA in limited circumstances:
  - Lender had a copy of the applicable power of attorney;
  - POA was recorded with the security instrument;
  - POA is notarized and principals name matches borrower's exactly;
  - An original (rather than a copy) must be forwarded to the document custodian; and
  - Attorney in fact was not an employee of lender, real estate brokerage or title company
- In recognition of the challenges posed by public health directives discouraging or prohibiting face-to-face dealings, the GSEs worked together under FHFA direction to both revise and align their standards temporarily as a result of the COVID-10 crisis



# What's New



# For loans with application dates on or before May 17, 2020.

- **What:** POA may be used to execute any of the Initial Loan Documents and Closing Documents
- **Who can be attorney in fact:**
  - An individual employed by the title insurer underwriting the title insurance policy or
  - An individual employed by the title agency issuing the title insurance policy for the Mortgage and closing the transaction but only if the title insurer has issued a closing protection letter relating to the transaction (or similar contractual indemnity) for such policy issuing agent
- **What about notarization:**
  - Must be notarized for all purchase deals; some refinances will not have to be notarized unless required by applicable law, e.g., to record it with the Security Instrument
  - If the POA is required to be recorded, notarization may be done by Remote Online Notarization (“RON”) in the states listed in the RON guidance.
  - If POA does not need to be recorded, notarization by RON may be used in all states



# Consumer review

- **After the Closing Disclosure has been delivered to the Borrower but prior to closing:**
- An employee of the originating lender or settlement agent must explain and discuss the key loan terms and use of the POA with the Borrower to confirm that the Borrower understands them.
  - For Fannie Mae, if the title company employee is the attorney-in-fact, the existing requirement for recorded, online interaction session with borrower still applies
- The acknowledgment may be in writing or in a recording of the telephonic or video discussion with borrower.





# FAQs



- **How much detail must the pre-closing discussion with the borrower have?**

Many borrowers may never have used a POA before and may not understand that the closing could occur without their final involvement. The Seller or settlement agent should give an overview of how the POA is used to sign on behalf of the Borrower and review the final terms of the mortgage loan to ensure they understand them.

- **What should the pre-closing acknowledgment from the Borrower look like?**

The acknowledgment from the borrower should memorialize that the Borrower understood the content of the discussion. It does not need to be signed, made under oath, or notarized. It may be made in writing or recorded on a teleconference or video conference. If in writing, the acknowledgement should be kept in the Mortgage file and if recorded, stored in a medium that it may be provided to GSE upon request.



# Other Title Issues



# GAP Issues


- GSEs accept lender's policies of title insurance written on the 2006 ALTA loan title insurance form or a local equivalent.
- Covered Risk 14 in the 2006 ALTA form includes "gap coverage" for matters arising between the loan closing date and the mortgage recording date.
- GSEs will accept this as long as there is no exception for this coverage under Schedule B of the policy



# Questions?



# Don't Forget



## COVID-19 Update

From Diane Tomb, ALTA CEO

April 13, 2020

### Track County Office Closures

ALTA is tracking the operating status of recording jurisdictions, as well as projected reopen dates, if online access is available and if counties accepts e-recording.

### Title Alliance Facilitates Closing for COVID-19 Survivor

- Despite executive orders in Pennsylvania causing confusion about the types business functions that can continue during the health pandemic, Title Alliance completed its first closing for a COVID-19 survivor last week.

### Housing Market Shifts to the Cyber Side Amid Pandemic

- A first-time homebuyer from Arlington, Va., purchased a home sight unseen with the help of Redfin during the coronavirus outbreak. "Technology allows us to do things that were unthinkable even just a few years ago," says Keith Gumbinger, vice president of HSH.com, a consumer mortgage information site. "Digital mortgage platforms can remotely verify employment and assets and the ability to communicate electronically means we can function. A decade ago, the housing market would have been completely shut down during a situation like this."

### Coronavirus Clamps Down on Real Estate Business

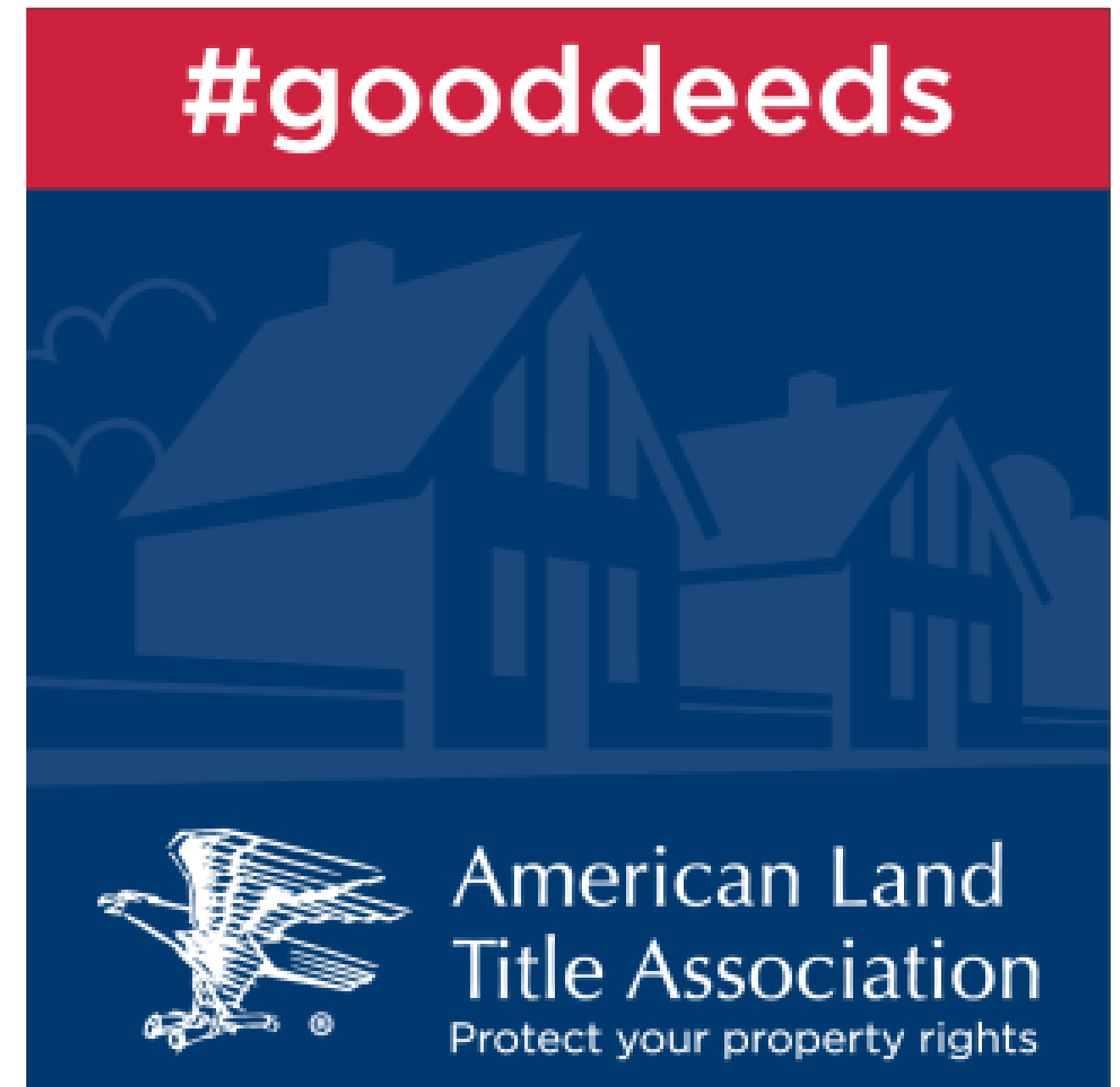
- ALTA COVID Resource Center
  - [www.alta.org/coronavirus](http://www.alta.org/coronavirus)
- GSE COVID resources Centers
  - <https://sf.freddiemac.com/about/covid19>
  - <https://singlefamily.fanniemae.com/media/22326/display>
- Please take ALTA's COVID Survey
  - <https://www.dynamicbenchmarking.com/alta-covid19>
- Register for our next webinars in our Virtual Advocacy Summit
  - April 28: Closing in the time of COVID: A case study
  - May 12: Fireside Chat with FHFA Director Mark Calabria



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- **Three Ways to Share With Us**

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- Email your story at **communications@alta.org**.
- Post your story in the comments section on our blog at **blog.alta.org**.



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