

July/August 2004

Official Publication of the  
American Land Title Association

# TitleNews

## Mortgage Impairment: The Deception Continues

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Photo Highlights from the 2004 Federal Conference

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# Title News

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RUNNING YOUR BUSINESS

### 20 Techniques to Build Your Business

by Michael A. Holden

Learn 20 proven techniques to make meaningful contact with customers and prospects that will not violate the recent CAN SPAM Act or the national do-not-call lists.

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TECHNOLOGY CORNER

### The Promise of eNotes:

#### Fact or Fairy Tale?

by Dan McLaughlin

What if we could create one giant eVault and electronically transfer ownership rights to mortgages exclusively within this benevolent giant's domain? Is that a fairy tale? Read on to find out.

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by Richard G. Carlston and Sunny J. Knight

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# leading edge

A Message from the Title Insurance Underwriters Section Chair

## TIME OUT!

Everyone says that things are slowing down. Interest rates have ticked up since reaching all-time lows last summer. Refinance business isn't what it was last year. Closing and escrow business is good but not what it was a year ago. Preparations for packaged services have lost pace as the much anticipated RESPA reform rule was sent back to HUD for review. So why is it that we still feel like we're moving at Mach 1 speed?

The truth of the matter is that we always move at a blistering pace. Not once in the last 29 years in this business do I remember sitting around and twiddling my thumbs waiting for things to get better. Not enough revenue? Get some more! Can't get more? Cut some expenses.



Chances are that you spend most of your time reacting to situations. How much time do you spend taking the time to work proactively in order to avoid stressful and emotional reactions? Like me, probably not enough.

There is so much on our plates; how can we possibly find time for the industry's issues? It's easy to say, "Well, ALTA can take care of that!" How about, "That's what underwriters are for." Or, "Our agents know all those Congress people; let them carry the message." Easy enough, let's just let someone else do the work for us.

"They" did pretty damn good. RESPA reform slammed, Radian was defeated, public relations addressed- things are fine, and I don't have the time.

So who does? The ALTA staff and Board are obligated and committed to resolving industry issues. But are they totally responsible for safeguarding our business? No. It's all of you making time for your association's business. There are a very select number of you out there that take the time to promote our industry's business. Let me name a few of your independent warriors. Bill Vollbracht and Diane Evans of Land Title, in Denver, were instrumental in winning the support of their Senator in the heat of the RESPA issue. Mike Wille of The Title Company in La Crosse, WI, for years preceding his involvement on the ALTA board and ever since, has been the most tenacious unpaid lobbyist I have ever known. Jan Alpert, president of LandAmerica in Richmond, VA, has been a tireless worker for your causes. All of these people are successful. Each took the time to make a difference for you.

How about you taking time out for all of us!

Rande Yeager

# TitleNews

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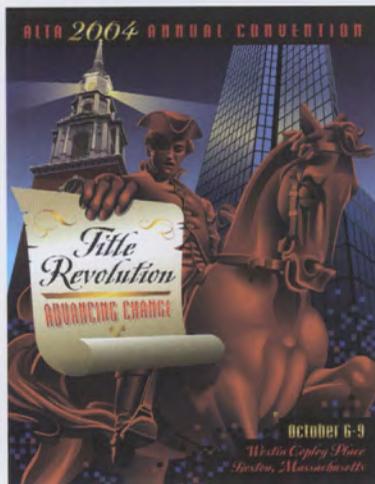
# ALTAnews

## Thanks to Oklahoma LTA

A special thank-you goes to the Oklahoma Land Title Association for their generous contribution of \$5,000 to the ALTA public awareness campaign. Oklahoma joins seven other land title associations who have contributed to the campaign: Maryland, Minnesota, New England, Ohio, Tennessee, Utah, and Wyoming. Contact Lorri Ragan at [lorri\\_ragan@alta.org](mailto:lorri_ragan@alta.org) or 1-800-787-2582 for more information on the campaign and how you can help.

## Boston Beckons You!

This year ALTA's Annual Convention is in beautiful, historic Boston, October 6-9. If you have not been to Boston in a while, now is the time to visit. The famous "Big Dig" construction project is completed, making traffic in and out of the city a breeze. And, we'll be there after the Democratic Convention!



The theme of this year's convention is "Title Revolution: Advancing Change." Sessions will be on topics such as RESPA and HUD's next step; mortgage impairment and its impact on the title industry; techniques to market your business more efficiently; what's new on identity theft, and information on title data standards and how they will benefit you and the industry. Look for the brochure with full details on the conference soon.

The Annual Convention provides you with the opportunity to learn what's happening in the industry, but, more importantly gives you the chance to catch up with other members to find out what is happening in their markets.

You can register online by going to ALTA's home page and clicking on "Meetings," then select "Annual Convention." We hope to see you in Boston in October.

## calendar

### ALTA Events

#### July

23-26

Large Agents Meeting  
Victoria, Canada

#### August

7-10

Annual Reinsurance Meeting  
Williamsburg, VA

#### October

6-9

ALTA Annual Convention  
Boston, MA

### State Conventions

#### July

15-17 Illinois  
15-17 Utah  
18-20 Michigan

#### August

5-7 Montana  
8-11 New York  
12-14 Minnesota  
19-21 Idaho  
19-21 Indiana  
20-22 Kansas

#### September

2-4 Wisconsin  
9-10 Arizona  
9-11 Dixie  
11-12 Maryland  
16-18 North Carolina  
16-19 Missouri  
19-21 Ohio  
22-24 Nebraska  
23-25 North Dakota  
TBA Oregon  
TBA Washington

#### November

17-19 Florida

#### December

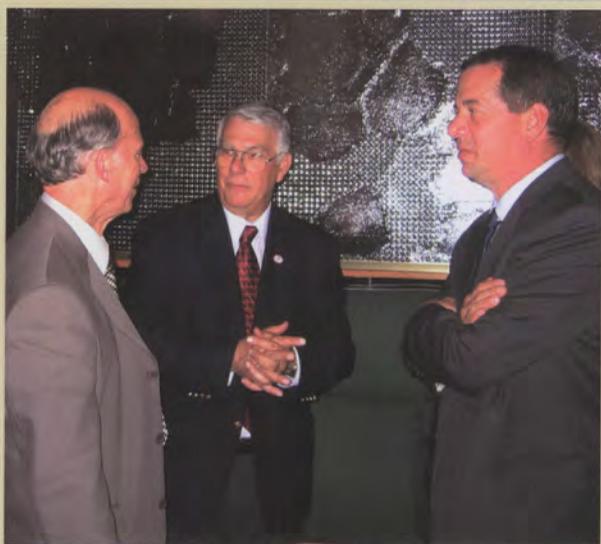
2-3 Louisiana

## ALTA Public Awareness Campaign Update

ALTA received a call from USA Today asking for an editorial on the title industry's views on HUD's attempt at RESPA reform. Our editorial ran opposite one from USA Today's editors in the June 1st edition. The request came during the ALTA Federal Conference and Ervin Bell rushed to help us write something and submit it to meet the deadline. The article reiterated that the title industry supports a simpler closing process but believes that HUD's proposal would have further complicated the process.

Ervin Bell has also worked with several title companies to customize the brochures, ads and video with their logos for use in local markets. Contact Ervin Bell at 562-592-3827 and ask Noel Alzua about customizing the materials for your local use.

## TIPAC Fundraiser



Curtis Tobin (l) and Peter Birnbaum (r), both of Attorneys' Title Guaranty Fund, Inc., Orlando, FL, speak to Chairman Don Manzullo (R-IL) during a TIPAC fundraiser this past May.

## HUD Secretary Tells Story Behind RESPA Withdrawal

At a National Association of Realtors legislative meeting in Washington this week, HUD Secretary Alphonso Jackson indicated that he did not withdraw HUD's proposed RESPA rule last March because of the hold on his nomination as secretary. He stated that he personally made the decision to pull the rule back because HUD "needed more input from the industry." Further, he said that next time HUD would talk to industry groups as they did during the negotiated rulemaking. He said, "If we have 75% or 80% agreement, we will have a bill [rule]. The administration is here to work with you and ask us to be your partners."

## What's the Future of RESPA?

You can still find out even if you missed ALTA's recent telephone seminar. A CD of the two-hour seminar is now available. You will hear RESPA experts, Sheldon E. Hochberg of Steptoe & Johnson, Jim Maher of ALTA, Jim Dufficy of First American, Don Partington from Fidelity National Financial, and Rich Patterson from Connecticut Attorneys Title, discuss how the withdrawal of HUD's proposed regulations will impact the title industry and how the industry is creating its own packages in response. The CD costs just \$275. To order the CD, visit [www.alta.org](http://www.alta.org) and click on the item under "ALTA News."

## Title Industry Can Play Role in Elections

The Presidential campaigns are influencing the pace and the content of Congressional and regulatory action this year. TIPAC is a federal PAC chartered to support members of the U.S. Senate and House of Representatives who are accessible to the title insurance industry. TIPAC is also, this year, fundraising for the title insurance industry for the Presidential candidates. Donations for Bush-Cheney '04 can be sent to TIPAC Republican Presidential Campaign, P.O. Box 65093, Washington, D.C. 20035. Tracking Number 9328 should be used for your Bush-Cheney correspondence. Donations for John Kerry for President can be sent to TIPAC P.O. Box 65094, Washington, DC 20035. Tracking number 2513 should be used. You can also make your Kerry contribution by visiting the web page dedicated to the title industry at <https://contribute.johnkerry.com/?team=2513> and make your contribution online. Send ALTA a copy of your info by fax to 1-888-329-2582. As Senator Kerry will be accepting matching funds upon his nomination at the Democratic convention on July 28, for maximum impact, checks or credit card donations should be sent by July 18. President Bush will be able to accept personal contributions until September 1, 2004. For further information contact Ann vom Eigen, legislative and regulatory counsel at 800-787-2582, ext 214.



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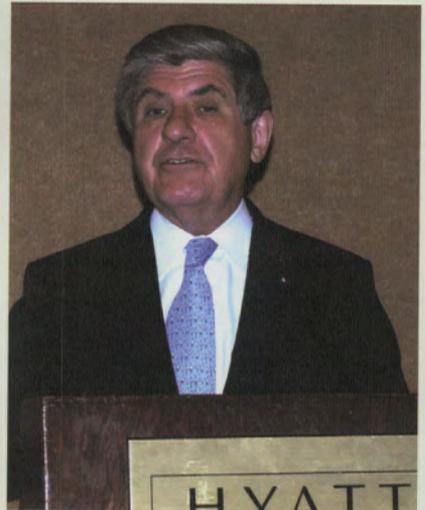
## convention highlights

# ALTA Federal Conference Featured Industry Experts



Chairman Donald Manzullo (R-IL) of the House Small Business Committee, received a standing ovation from ALTA members for all his work on overturning HUD's proposed changes to RESPA. He commended the title industry for its diligent work on the issue.

**ALTA**  
**2004**  
**FEDERAL CONFERENCE**  
Washington Affecting Your Business  
April 19-21, 2004



Senator Ben Nelson (D-NE) told ALTA members during breakfast that he does not believe that insurance should be regulated by the federal government, that regulation should be left up to the states.



New York delegation members meet with Nydia Velasquez (D-NY), left, Ranking Member of the House Small Business Committee.



Political commentator Stuart Rothenberg, right, sponsored by TIPAC, said that the country is so polarized and uneven that he cannot predict who will win the presidency.

Ivy Jackson, director, Office of RESPA and Interstate Land Sales, indicated that her office will continue to be proactive to protect consumers and level the playing field among vendors.



2004 TIPAC Platinum, Chairman's, and Gold Club members were treated to a special dinner with Mike Oxley (R-OH), left, Chairman of the House Financial Services Committee.



Diane Calloway from Georgia swears to tell the truth about title insurance as she and members from Louisiana meet with Rep. Johnny Isakson (R-GA), (second from left).



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# Mortgage Impairment: the Deception Continues

Despite ALTA's recent success against the Radian mortgage impairment product, the title industry is still battling to protect the title insurance mono-line statutes.

by Richard G. Carlston and Sunny J. Knight

**T**he title industry, spearheaded by ALTA, has actively opposed the issuance of mortgage

impairment products by nontitle insurers. To date, ALTA has achieved some noteworthy successes. But, in achieving these successes, ALTA has discovered the myriad of ways that nontitle insurers are attempting to

disguise their products so that regulators will not be able to identify the fact that the products either constitute title insurance or include title insurance. With this discovery, ALTA, in conjunction with the state land title associations, has undertaken an extensive education process for state regulators designed to show them how these slights of hand are being accomplished. This will allow those state regulators who have been deceived by these nontitle insurers to recognize the semantic deceptions,

block future filings, review previous approvals, and take appropriate corrective action to revoke any such inadvertent approvals.

This article addresses the basic legal issues presented by the issuance of mortgage impairment products by nontitle insurers and discusses ALTA's response to the proliferation of such products. It further outlines the operative provisions and the current status of a range of mortgage impairment products.

## cover story

### **P&C COMPANIES ARE ATTEMPTING TO ISSUE TITLE INSURANCE**

Title insurance is monoline insurance. This means that the right to insure risks related to title is assigned exclusively to licensed title insurers, and any insurer that transacts other nontitle lines of insurance is prohibited from insuring title risks. The California monoline statute is illustrative. It provides:

An insurer which anywhere in the United States transacts any class of insurance other than title insurance is not eligible for the issuance of a certificate of authority to transact title insurance in this State nor for the renewal thereof.

*ALTA has been, and will continue to be, at the forefront of this effort.*

Mortgage impairment products insure title insurance risks. Regardless of the semantics employed or the descriptive title adopted, the nature of an insurance product is determined by the risk insured. Mortgage impairment products insure against the risk of loss arising out of undisclosed liens senior to the insured mortgage, in other words, the priority of the insured lien. This is a title insurance risk; therefore, this type of coverage can only be offered by a licensed title insurer. The issuance of such products by property and casualty insurers is prohibited by both state licensing requirements and monoline restrictions.

### **THE EVOLUTION ON THE MARKETPLACE**

The first mortgage impairment products entered the marketplace over a decade ago as nontitle insurers saw the opportunity to insert themselves into the title insurance marketplace. Starting generally with alleged non-insurance warranty products, this

trend has spread to property and casualty insurers and a mortgage guaranty insurer. These companies surreptitiously began issuing lien priority insurance through the creative use of deceptive terminology and semantic games intended to mask the true nature of their products. For example, they changed the descriptive term for the risk insured. For almost 100 years, the risk of loss arising out of undisclosed liens senior to the insured mortgage has been referred to as lien priority insurance, the insurance of the priority of the mortgage. Recognizing that they could not use the term "lien priority" in their policies to describe the insured risk, these companies, now

primarily property and casualty insurers, have renamed the risk mortgage impairment insurance. Despite this creative semantic game, however, the risk insured remains the lien's priority. More recently, Radian Guaranty, Inc. began describing the risk as undisclosed lien insurance, as it sought to blur the monoline statutes applicable to title insurance with the monoline statute applicable to mortgage guaranty insurance with its Radian Lien Protection (RLP) policy.

While departments of insurance across the country have attempted to be diligent in identifying and rejecting mortgage impairment products as disguised title insurance, in many instances, because of the semantic ploys used by these nontitle insurers, these policies slip by without drawing the attention of regulators. However, despite that glitch, 30 states have rejected one or more mortgage impairment products.

ALTA is working diligently to address the proliferation of these mortgage impairment products, to

prevent them from entering the marketplace and to have those products that have slipped by regulators reviewed and removed from the marketplace. It is addressing the issue on the regulatory front by identifying new products, educating regulators (both directly by state and through the National Association of Insurance Commissioners (NAIC) Title Insurance Working Group), and acting as a resource for those regulators when questions arise. ALTA is also addressing the issue on the legal front both by directly heading up litigation challenging mortgage impairment products and by providing assistance to others doing the same. ALTA has been, and will continue to be, at the forefront of this effort.

### **THE PRODUCTS AND THEIR STATUS**

**The Radian Lien Protection Policy**  
Radian began offering the RLP in 2001 as a pooled mortgage guaranty policy. The RLP is a disguised title insurance policy, providing lien priority insurance under the guise of "undisclosed lien" insurance. The RLP, when issued by Radian, was designed to insure refinanced first mortgages. Its corollary, issued by Radian's subsidiary, was designed to insure refinanced junior mortgages.

The RLP combines two different lines of insurance, making it a bundled product. The principal coverage is for "Undisclosed Liens." The RLP limits this coverage to 50 basis points or 0.5% of the aggregate total principal amount of loans in the mortgage pool. The RLP bundles a nominal amount of traditional pooled mortgage guaranty insurance to this title insurance. The mortgage guaranty insurance is limited to 0.01% of the aggregate total principal amount of loans in the mortgage pool. Accordingly, it is apparent from

## cover story

these coverage limits that the dominant purpose of the RLP is to provide lien priority title insurance.

### State Rejections of the RLP

That the RLP illegally provides title insurance has been recognized by multiple departments of insurance. The states of Texas, Florida, Connecticut, New Mexico, California and Pennsylvania, the latter two discussed below, have each expressly rejected filings of the RLP on the ground that the RLP includes title insurance.

The state of North Carolina issued a general bulletin concluding that mortgage impairment/lien priority insurance constitutes title insurance and has confirmed that the restrictions set forth in that bulletin apply to the RLP.

The Attorney General of the state

of Alabama issued an opinion concluding that mortgage impairment insurance constitutes title insurance and can only be issued by title insurers.

### California Cease and Desist Order

On June 19, 2002, the California Department of Insurance issued a cease and desist order against Radian and its affiliates based on the fact that the RLP violates both the mortgage guaranty monoline statute and the title insurance monoline statute.

Radian demanded an administrative hearing to contest the cease and desist order. After a three-day hearing, the administrative law judge issued his proposed decision on December 31, 2002, upholding the order.

On April 15, 2003, the newly elected California Insurance Commissioner John Garamendi

rejected the proposed decision but retained the cease and desist order pending his own review of the matter. Commissioner Garamendi issued his final decision and order sustaining the cease and desist order on July 14, 2003. The Commissioner's decision expressly provides that "[t]he Radian Lien Protection Policy constitutes title insurance pursuant to California Insurance Code Section 12340.1."

In response, Radian sought a writ of mandamus in the San Francisco Superior Court to set aside Commissioner Garamendi's decision. Both ALTA and MICA (Mortgage Insurance Companies of America) submitted amicus briefs in opposition to Radian's petition. Arguments were heard on December 3, 2003, and Radian's petition was denied by the trial court on January 2, 2004. Radian has appealed the trial court decision.

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### David Busch

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The state of Pennsylvania, which is Radian's domicile, has issued a letter stating that Radian cannot offer the RLP until it is properly licensed. While the letter is relatively

This legal memorandum has been publicly released by the NAIC Working Group. Given the foregoing, we currently believe that the RLP has been withdrawn from

### *ALTA recognized the need to assist states in identifying title insurance products masquerading as mortgage impairment products.*

abbreviated, what is clear is that Radian is licensed in Pennsylvania to issue mortgage guaranty insurance. It is not licensed to issue title insurance. Pennsylvania did not take formal action against Radian because it ceased issuing the RLP in light of the California cease and desist order. (The CA cease and desist order has nationwide application. If Radian transacts title insurance anywhere in the nation, CA may rescind Radian's Certificate of Authority to issue mortgage guaranty insurance in CA. In light of this, Radian has advised the CA DOI that it has suspended its advertising and issuance of the RLP nationwide.

#### **NAIC Legal Opinion**

The NAIC Title Insurance Working Group has undertaken to study the question of who can issue mortgage impairment insurance. In so doing, it has focused directly on the RLP. In reviewing the RLP, the Working Group solicited and received a legal opinion from NAIC counsel confirming that the RLP constitutes title insurance. The opinion concludes that "under the pertinent NAIC Model Acts the RLP product is in fact title insurance as the primary risk being insured is the risk of an 'undisclosed lien' which risk is one that has occurred in the past and is covered by monoline title insurance."

the marketplace. However, companies should remain vigilant in the marketplace for any signs of this product.

#### **PROPERTY AND CASUALTY MORTGAGE IMPAIRMENT PRODUCTS**

During the process of educating various states about the RLP, ALTA recognized the need to assist states in identifying title insurance products masquerading as mortgage impairment products, given the clever semantics and policy structuring that these products employ to hide their true nature. Accordingly, ALTA is now actively engaged in these educational efforts as it tries to remove all these illegal products from the marketplace.

Mortgage impairment products, which with the removal of the RLP are now offered by property and casualty insurers, can generally be classified into two distinct categories: 1) products whose coverage provisions define the coverage to be mortgage impairment title insurance (standard mortgage impairment products), and 2) bundled products where the title insurance coverage has been packaged with other types of insurance, most commonly errors and omissions insurance (E&O mortgage impairment products).

#### **Standard Mortgage Impairment Products**

Standard mortgage impairment products attempt to disguise title insurance coverage by renaming it mortgage impairment insurance. Like virtually all mortgage impairment products, they provide coverage for the risk of loss associated with undisclosed liens senior to the insured mortgage. ALTA recently highlighted two active examples of this type of policy, The Travelers' Home Equity Protector and BancInsure's Lenders Performance Bond, in a presentation to the spring meeting of the NAIC Working Group on March 14, 2004. It is also discussing these products with regulators from various states. To the extent any companies are aware of these products being used in any state, this information should be provided to ALTA to ensure that ALTA has the opportunity to educate the regulators of that state.

#### **1. The Travelers' Home Equity Protector**

The Traveler's Home Equity Protector purports to eliminate the lender's need for a title search through its marketing because it provides mortgage impairment insurance. The policy provides as follows:

Coverage is extended under this policy to loss incurred by the Assured during the Coverage Period due to impairment of the Assured's Second Position Mortgage Interest due to the default of the borrower wherein the foreclosure and sale where permitted by Law, does not provide an amount sufficient to satisfy the Assured's Second Position Mortgage Interest.

The policy further provides that: The Mortgage Interest must have been impaired due to a previously

## cover story

unknown Mortgage Interest or lien held by one who is not liable on the Assured's Second Position Mortgage.

Regardless of how it is labeled, this policy provides lien priority insurance and violates title insurance mono-line statutes as well as the licensing laws of all states in which it is being offered. This policy is a typical example of a standard mortgage impairment product.

### 2. BancInsure's Lenders Performance Bond.

Like the Travelers' product, BancInsure's Lenders Performance Bond purports to eliminate the lender's need for a title search by providing protection against undisclosed liens. The BancInsure product, couched in a bond format, provides:

Subject to the terms of this bond,

we, the Principle and Surety, are firmly bound to the Obligee in the above penal sum [not to exceed \$100,000 per schedule loan]....

Payment under the bond is conditioned on the existence of an undisclosed senior lien, specifically that:

The priority of the Obligee's second mortgage interest following foreclosure and sale of the property has been impaired, because of the existence of an encumbrance not known or disclosed to the Obligee as required by the loan application.

Again, despite the product's format, it provides lien priority title insurance. Accordingly, the Lenders Performance Bond is another clear example of a standard mortgage impairment product.

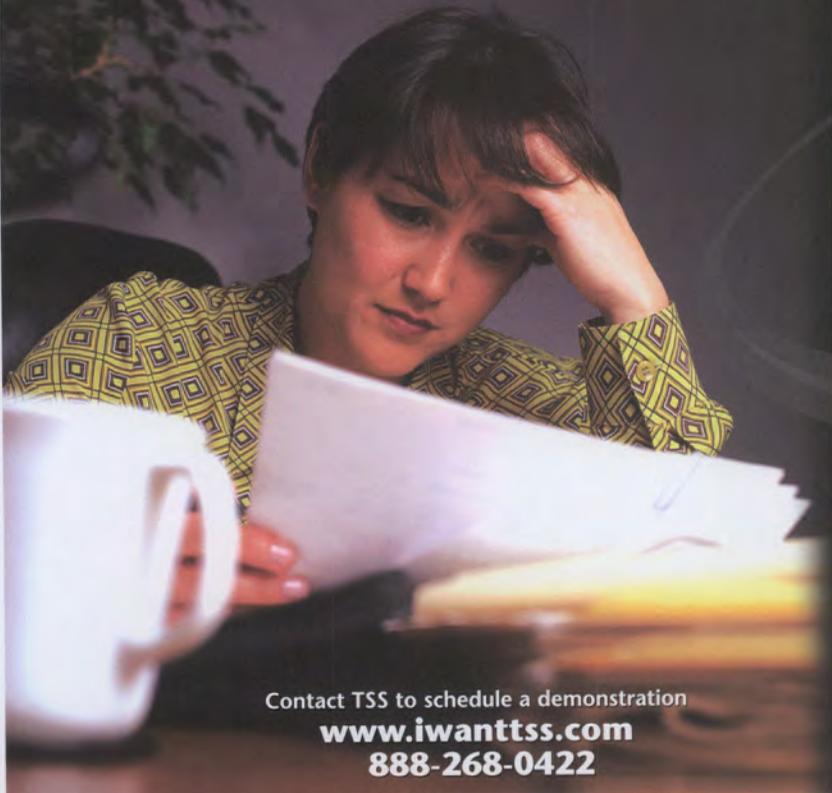
### E&O Mortgage Impairment Products

The second category of mortgage impairment products typically offered by property and casualty insurers are policies that attempt to disguise title insurance by bundling it with errors and omissions coverage. ALTA highlighted two active examples of this type of policy, Great American's Form 5701 and Fidelity & Deposit's Mortgage Lending Activities Protection Policy, in a presentation to the winter meeting of the NAIC Working Group on December 7, 2003. ALTA has discussed these products with several state regulators.

#### 1. Great American's Form 5701

Great American's Form 5701 provides coverage for loss due to the existence of undisclosed liens senior to the insured mortgage. Other

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# I want TSS...

## cover story

than a few of its exclusions from coverage, the basic policy appears to be a relatively vanilla errors and omissions policy. The form provides coverage for "all sums incurred by the insured in damages as a result of an incident, and all liabilities contractually assumed by the Insured under a mortgage agreement as a result of an incident." An "incident" under the policy "means an act, error, omission, personal injury or breach of duty by the Insured in their mortgage lending activities." In short, the policies cover errors and omissions by the insured in carrying out its mortgage lending activities.

But, title insurance coverage is added to Form 5701 through a series of endorsements that can be issued. Through these endorsements, the definition of mortgage lending activities is amended to insure lien priority and vesting, both title insurance risks. Through these endorsements, Great American is impermissibly bundling title insurance coverage with errors and omissions insurance.

This policy poses a central challenge to the title industry not only because it includes title insurance but also because it can insure any mortgage on any property. Whereas, many mortgage impairment policies are limited to residential junior mortgages or home equity lines of credit, this policy is not. Through endorsements it can apply to both commercial and residential properties. Through endorsements, it can apply to first mortgages and junior mortgages. Indeed, these same endorsements extend its application to mortgages issued during the purchase transaction. Accordingly, if permitted, this policy will effectively obliterate the title insurance mono-line provisions.

Great American has a sister policy to Form 5701, its Form 5701c. Unlike the Form 5701, which bundles title insurance through endorsement this policy includes title insurance in the body of the policy through the definition of the term "mortgage lending activities," which unambiguously covers risks associated with vesting and unknown senior liens.

### 2. Fidelity & Deposit/Zurich Financial Services

The Fidelity & Deposit/Zurich Financial Services Group's Mortgage Lending Activities Protection Policy is another example of an E&O mortgage impairment product.

The insuring agreement in the Mortgage Lending Activities Protection Policy provides that "...the Insurer agrees to indemnify the Insured for Loss resulting from a Mortgage Lending Wrongful Act in connection with its Mortgage Lending Activities." Like the Great American policies, this product purports to cover errors and omissions by the insured in carrying out its mortgage lending activities but constitutes a bundled product with disguised title insurance coverage.

In this policy, one can't tell that the policy includes title insurance from the insuring clauses. Instead, one can only recognize the nature of this policy through its exclusions. For example, exclusion (j) to the policy excludes the following losses:

(j) for any Mortgage whose priority is not lower than its priority position when recorded. This exclusion does not apply to Mortgages whose priority position is the same as or higher than when recorded because of the satisfaction of a lien ....

In other words, only mortgages that

have suffered a loss of priority are covered under this policy. All other mortgages are excluded. Clearly, this is a title insurance policy.

### MUCH STILL TO BE DONE

ALTA, in conjunction with state land title associations, is continuing its efforts to identify mortgage impairment policies and educate regulators regarding the dangers posed by the acceptance of such products. ALTA needs your help in monitoring your marketplace to determine which mortgage impairment products, if any, are being offered in your marketplace. If you identify any, please advise ALTA so that it can take appropriate actions.



Richard G. Carlston is a shareholder with the firm of Miller, Starr & Regalia in Walnut Creek, CA, and represents ALTA in various matters.

Rich serves on the

ALTA Claims Committee and Title Counsel Committee. He can be reached at [RGC@MSandR.com](mailto:RGC@MSandR.com) or (925) 935-9400.



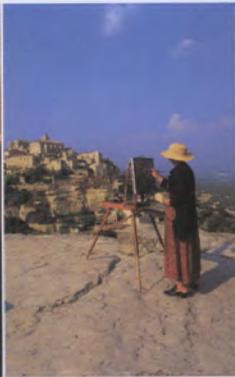
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# 20 Techniques to Build Your Business

In light of recent regulations prohibiting some forms of soliciting customers, you can still build your business by using these proven communication techniques.

by Michael A. Holden

**C**an businesses talk, fax, or e-mail customers anymore? Seems like a good question in today's

business environment. The CAN-SPAM Act of 2003, which limits certain kinds of commercial electronic messages might make businesses concerned. The National Do Not Call/Fax legislation enacted in 2003, which limits calls to persons or businesses on the list, is another concern. Finally, the Gramm-Leach-Bliley Act of 1999, regulating privacy and nonpublic information, can also place limits on good business communication. However, title companies can find ways to effectively and publicly communicate with customers in positive, proactive ways that not only comply with the laws but also successfully build their businesses.



Michael A. Holden is president of Guaranty Land Title Insurance, Inc., Columbia, MO. He can be reached at [mike\\_holden@guarantytile.com](mailto:mike_holden@guarantytile.com) or 800-568-1944. This article is an excerpt from his presentation at ALTA's 2004

Tech Forum in New Orleans. Items with a \* are concepts and ideas provided by Darryl Turner Companies, Modesto, CA.

### WHAT THE ACTS SAY

The CAN-SPAM Act of 2003 was established to regulate certain kinds of commercial electronic mail messages. The Act does not prohibit sending unsolicited e-mails but instead requires that the e-mail's subject clearly state it is an advertisement or solicitation. An option to "opt out" from future e-mails must also be present in the message. The act also states the message must have a valid reply address. Title company e-mail messages are vastly exempt because the act exempts: "e-mails...to facilitate, complete, or confirm a commercial transaction."

The Do-Not-Call/Fax legislation passed recently does place significant restrictions on "solicitation" phone calls or faxes. Exemptions exist, like the ones for the CAN-SPAM ACT, which make title companies vastly able to call almost anyone. The exemptions are as follows:

- calls from organizations with which the consumer has established a business relationship;
- calls for which the consumer has given prior written consent;
- calls which are not commercial or do not include unsolicited advertisements;
- calls by or on behalf of tax-exempt nonprofit organizations.

Most all calls made by a title company to an existing customer or client would fall into the first exception of an "established business

relationship" and would be permitted.

The Gramm-Leach-Bliley Act, sometimes called the Financial Services Modernization Act of 1999, which regulates privacy and non-public information, is also a big concern for title companies. In short the GLB Act requires financial institutions to publish privacy policies on the collection and sharing of non-public customer information and to comply with those policies. This act, and the privacy policies enacted by most title companies and underwriters, is an important key to your communication. The privacy policies your company has enacted or the privacy policies of your underwriter can limit you on what information you share in your communications. Read your policies or your underwriters' policies and follow them.

### THE KEYS TO BUILD BUSINESS

There are many proven communication techniques that can help you build your business. Each relies on this premise: "Positive, proactive communication with customers is the way to build business." Why do real estate agents want positive, proactive communication? Because they live on commissions. If your salary depended solely on whether or not a transaction closed that month, wouldn't you want to know everything that happened to

# running your business

that transaction the very moment it happened? When the title commitment was ready, when the buyer got loan approval, when the bank funded the escrow, when the closing was scheduled, etc. Each step is an opportunity to communicate with your client, and let them know you are getting their deal (the means to them getting a salary this month) done. Balance is also important. Not every market works well with constant communication. In some locations, two or three positive, proactive contacts with clients are quite sufficient to provide the comfort level they desire.

But this communication premise doesn't stop there. You can use it to build business every time you communicate with clients or potential clients. Here are some techniques used successfully by companies over the years:

1. **Client review calls.** Calling your customers and asking them if they want to receive commitments and HUD statements by e-mail, then getting their e-mail address and thanking them for their business. The following script is good for this call: "We are implementing a new service at our title company—we can now e-mail your title commitment and preliminary HUD statement to you when completed, so we would like to get your e-mail address if you would like to be part of this new service?" I haven't called an agent yet that ever said no.
2. **E-mail your commitments and HUD Statements.** Once you have the agent's e-mail address, use it! E-mail updates on the transaction to keep them informed.
3. **Cold calling.** Call a current or prospective client on Monday morning between 9:00 and 11:00 a.m. and use a variation of

this script: "Hi, this is (your name) from (your company). I know there was a lot of real estate activity this past weekend and wanted to check to see if you are working with anyone we can help you with? We have subdivision plat copies, subdivision restrictions, and a whole host of other data which might enable you to finalize a contract you are currently working on."

#### 4. **Duplication of agent contact to the non-referring agent.**

Duplicate every correspondence you have with your "referring agent" to your non-referring agent. If you send a copy of the commitment to the referring agent, send one to the non-referring agent. If you send an e-mail telling the referring agent the loan is approved, don't rely on that agent to pass that information on to the non-referring agent; send that info directly to them. It will make all the difference in the world.\*

5. **Phone "on-hold" message.** Here are some ideas to include in your on-hold message (and everyone should have one!). Statements that promote your expertise: "Did you know our company handles more (new construction/farms and acreage/residential resale) transactions than any other title company in the area?" Statements that instill value: "We value our customer's time. Did you know we streamline the closing process with our technological advancements and expert level staff?" Statements that instill responsiveness: "We will be right back to answer your questions; thank-you for holding." Statements that instill quality: "Did you know our company is ranked in the top 2% in our

region for accuracy?" "We are members of an elite group of title companies recognized for quality and excellence." Statements that instill customer service: "Did you know our Web site is available 24-hours a day to provide you with a source for title and closing information? Check it out today at [www.titlecompany.com](http://www.titlecompany.com)

#### 6. **Prepare an open-house packet for real estate agents.**

Let's say it's Friday at 2 p.m.. What can you do to market your business over the weekend? Look in the paper and find the open houses planned for that weekend. Then prepare a packet with some or all of the following information: subdivision plat/subdivision restrictions/loan amortization booklets/last year's tax bill/ the last 12 months' utilities statements/ and a prospective loan-rate chart. Give that packet to the local agent holding the open house.

#### 7. **Visit an open house this weekend.**

You could go see that model home in a new subdivision that you really want to do the title work for. Talk to the real estate agent—they are stuck there for hours—they will usually welcome (unless working with a prospective buyer right then) the chance to talk to you.

#### 8. **E-mail or hand-deliver newsletters.**

These can contain simple information your clients need to know; introduce new products and services you offer; introduce new employees; provide local lending rates; etc.

9. **How to get in the door.** Imagine this. One title company drops off a pen and note pad for your good prospect at 9 a.m. Another title company visits with your good prospect at 10 a.m., and gives her two pens and two note pads. The next title company

## Order Your Marketing Kit

**Y**ou asked for it and ALTA responded! The Title Industry Marketing Kit, free to ALTA members, is designed to help you explain the value of title insurance to real estate agents, lenders, builders and consumers. It contains a 12-minute video (or DVD) which can be shown to consumers at closing that explains the entire title search process and why title insurance is so valuable. A PowerPoint presentation is also included if you prefer that medium. The kit contains sample brochures you can give to consumers at closing. These brochures can be ordered in bulk with your address or logo on them. There are also sample advertisements that can be customized for you and placed in local real estate publications or new homes guides. Finally, there are articles that you can add your byline to and submit to your local newspaper. All in all, a great way to market your company while educating these audiences about the value of title insurance. To order your kit, see the order form on the inside back cover of Title News or go to ALTA's home page and look under "ALTA News." Kits are free for ALTA members, and only \$50 for non-members.

visits at 11 a.m. and the prospect sends them away; she doesn't have time for more pens and note pads. You come in to see her at noon—what response do you think you are going to get? Now imagine that you have a name of someone who wants to buy a home to give the real estate agent. Do you think the outcome will be different? A lead can be anything from a list of for-sale-by-owner names to names of new marriage licensees.

### 10. Farming/prospecting lists for Realtors.

Create a list of potential clients for the Realtor® you are trying to work with. Any of the following are good sources to provide leads:

- Marriage Licenses – 74% of all brides expect to buy a house within 6 months of their marriage!
- Divorce records – 50% of all divorces will result in some sale of real estate, usually the primary residence.
- Delinquent tax records
- Polk's Directories can give you

phone numbers by street for your agent to call. (Call 1-800-275-7655)

- Names by subdivision
- Names by street location
- Lists of employees who work at a factory or large employer

### 11. Local Board of Realtor® Sales Meetings:

Most local boards have a weekly or monthly meeting—as an associate member of your board, a good source of communication is to make a presentation to the meeting about your company. If you need an idea to get started on your presentation, order the ALTA Title Industry Marketing Kit. It contains a video and PowerPoint presentation on the value title professionals bring to the closing process. (See the sidebar for information on ordering the free kit.)

### 12. Board of Realtor® Newsletters.

You can provide both advertisements and content for your local Board of Realtor® newsletters (most are hungry for them). Again, the ALTA Title

Industry Marketing Kit has sample ads and articles promoting the value of title insurance that you can ask them to print.

### 13. Web/E-mail/identification.

Every piece of correspondence you send out should have your Web and e-mail identification on it. You wouldn't send out a fax without your phone number on it, right? The same should apply for your e-mail and Web site address.

### 14. Articles for your local newspaper.

The ALTA Title Industry Marketing Kit contains opinion articles you can add your byline to and send to the local newspaper. This is a great way to communicate to your client base.

### 15. Generating leads.

Every day prospective homebuyers call lenders to ask about financing but are not yet working with a real estate agent. Likewise, every day prospective homebuyers call a real estate agent to see a house and are not yet working with a bank or mortgage company. The trick is to facilitate real estate agents and lenders working together to share leads with each other. One way to achieve this is to have a forum or lunch with both real estate agents and mortgage lenders. Come up with the way to put these people together and you will reap the benefits of the referral of business.

### 16. Real estate seminars.

These can be as simple as presenting a local seminar about title insurance or as complex as becoming a national speaker. As cost goes up for this kind of event, it is a good idea to begin limiting attendance to agents who have sent you an order within the last 90 days. Continuing education, national speaker classes, even underwriter precanned seminars can be very good ways to build your business. When promoting a seminar, I like

## running your business

the motto: "We are helping you, the real estate agent, build your business with education and quality programs, and your success will help us build our business!"

- 17. E-group services.** Set up your own list serve. Many local real estate groups have set up their own list serve. List serves are online conversation groups agents use to share new listings, news and events, etc. However, if you are in a smaller market, there may not be an agent list serve. Introducing a list serve for agents to use would greatly help this smaller market.
- 18. Title plant/records usage.** Your title plant or other records can provide valuable information to your clients and potential clients. Subdivision plats and restrictions, maps and area plans, ownership records, and lists of current

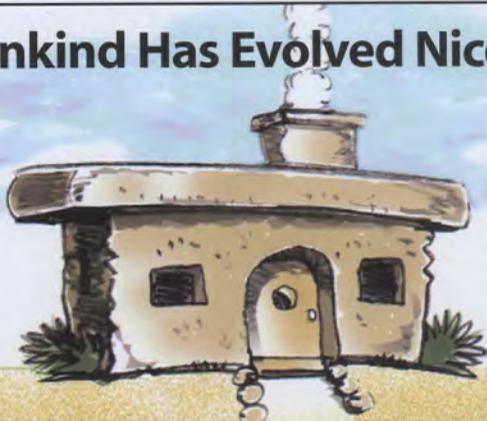
mortgages are valuable to the real estate agent for their listing and potential sale. Even prospecting lists of all the owners in a subdivision can help!

- 19. Brochure design.** Real estate agents are not always graphic designers. If your marketing rep can produce high-quality property brochures, advertising brochures and postcards, or other marketing materials for your client base, you have raised your value to that agent. Working knowledge of Microsoft Publisher is usually all you need to be able to produce high-quality brochures. Another good source of materials is available from real estate agent marketing experts like Pat Zaby. Check out his products at [www.patzaby.com](http://www.patzaby.com)
- 20. Mailing individual cards or**

**letters to your agent's prospects.** A marketing representative can be a "real estate marketing consultant" for your customers. If your marketing rep can take post cards, predesigned letters, or other mailings and send them to the owners in a subdivision for a real estate agent client, you have saved that agent time and energy that can put into getting more sales.\*

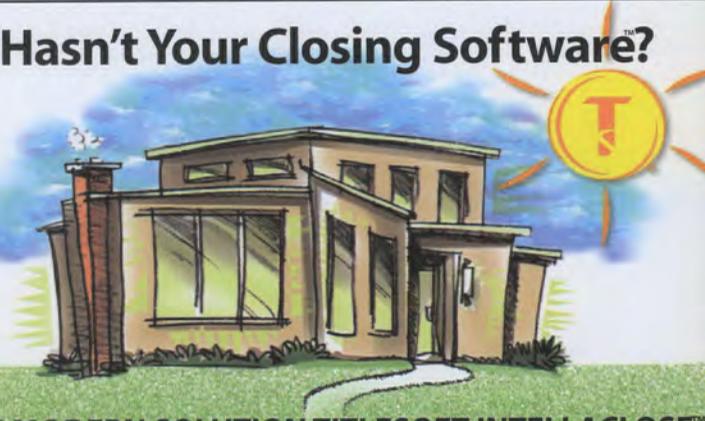
With all of the recent regulations against phone calls and faxes, title companies need to be creative to find ways to promote their businesses to real estate agents. Keeping the ideal of high quality, proactive communication in the minds of everyone in your company is the key step in making your company the most desired title company in your market.

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# The Promise of eNotes: Fact or Fairy Tale?

A new system, operated by MERS, will allow you to sell a legally enforceable eNote to any investor participating in the MERS® eRegistry.

by Dan McLaughlin

**T** **THE PROBLEM**  
If you could wave a magic wand and instantly turn paper promissory

notes into electronic ones (eNotes), you would transform an industry in a flash. But then, with your next stroke, would you just blindly turn document custodians into a multitude of electronic vaults (eVaults)? Given the opportunity, wouldn't you rather create one giant eVault and forever banish the evil practice of transferring documents from one custodian to another? Then we could electronically transfer ownership rights to mortgages exclusively within this benevolent giant's domain. Peace and prosperity would settle upon our industry like the morning dew, and lenders, warehouse lenders, and



Dan McLaughlin is executive vice president and product division manager for MERS, the Mortgage Electronic Registrations System, in Vienna, VA. He can

be reached at danm@mersinc.org. ALTA funded the development of MERS to help mortgage lenders eliminate the need for recording mortgage loan assignments when ownership rights change in secondary market transactions.

investors would trade happily ever after.

But, alas, we live in the real world where paper and electronic notes will coexist for ages to come. And, as mere mortals, we are wedded to the illusion that we must "hold" our eNotes in our own proprietary eVaults, lest we lose our perceived perfection.

Herein lies the dilemma for those wanting to buy and sell eNotes. An eNote can be duplicated from eVault to eVault without definitive proof of which is the "original." If you can't

## Paper World

Original Signed Note  
Possession  
Investor  
Custodian  
Endorsement  
Holder in due course status

## Electronic World

Authoritative Copy of eNote  
Control  
Controller  
Location  
Transfer of Control  
Transfer of Control audit trail

prove possession, you can't enforce your rights as note holder. Is the promise of eNotes then nothing but a fantasy?

## THE SOLUTION

The MERS® eRegistry solves the problem of duplicate eNotes by providing a central registry to identify the current controller and location of the Authoritative Copy of the eNote.

But what doublespeak is this, you ask? Patience friend, and ponder the table below:

In place of the original signed note, the enabling legislation (E-SIGN and UETA) has established the concept that, of the many potential exact copies of the eNote, only one at a time can be the Authoritative Copy.

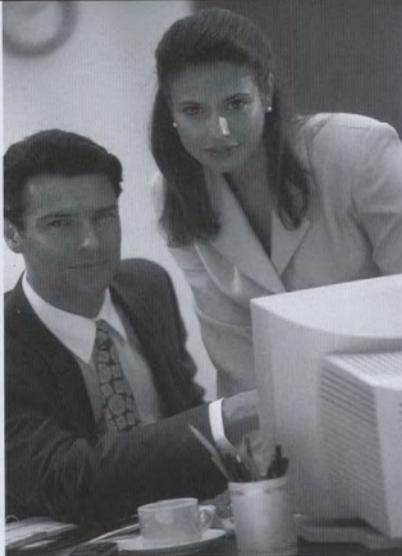
As the investor, you can't physically possess an eNote in the same way that you can possess a paper note, but you can control it. You control it by establishing yourself as the sole controller on the MERS® eRegistry.

In addition to your status as controller, you identify on the registry the sole location of the Authoritative Copy of the eNote (the sole location is actually the custodian that holds the eNote on your behalf in its eVault). Now you have the electronic equivalent of "possession" in the paper world.

Rather than endorsing the eNote upon sale to an investor, you transfer control on the Registry. This transfer of control on the electronic records of the Registry maintains "holder in due course" status for each investor in turn. The location of the Authoritative Copy need not change.

In plain English, the MERS®

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## technology corner

eRegistry provides liquidity for eNotes on a "best execution" basis. It ensures that an otherwise legally enforceable eNote can be sold to any investor participating in the MERS® eRegistry. Outside the MERS® eRegistry you can only sell your eNote through a proprietary registry operated by your investor.

This is true because the "safe harbor" provision of UETA requires you to use the registry specifically named in the eNotes that your investor is willing to purchase. Without the MERS® eRegistry, each investor would be required to operate its own propriety registry, and the uniform Fannie/Freddie Note would no longer be uniform.

### WHY, PRAY TELL, MERS?

After Fannie Mae and Freddie Mac published their respective preliminary

guidelines for purchasing eNotes, MERS began working with MBA's eMortgage workgroups and its Residential Technology Committee to help reconcile differences between the approaches of the GSEs to purchasing eMortgages. Once Fannie and Freddie agreed that a central registry was the answer to the duplicate eNote issue, we used our experience in developing and running the MERS® System to help formulate the MBA's National eNote Registry Requirements Document. Immediately following the publication of the requirements on March 7, 2003, MERS announced its intent to build the National eNote Registry, which we named the MERS® eRegistry.

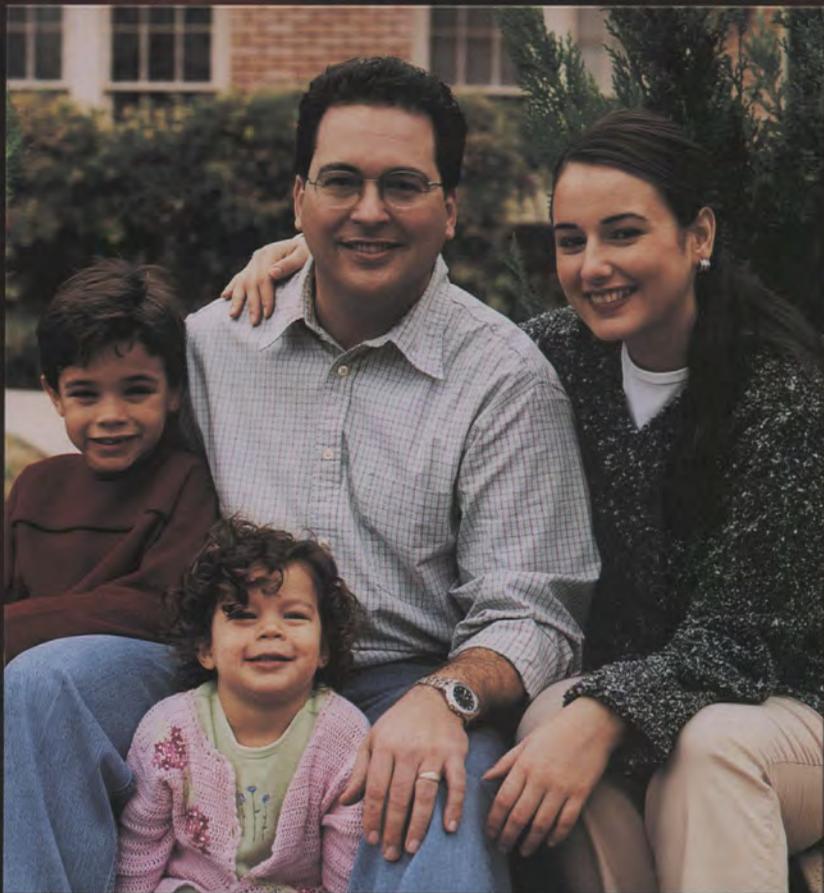
The MERS® eRegistry is the logical extension of the services that MERS currently provides as the industry's utility for eliminating

assignments. That is, MERS was created by the mortgage banking industry to streamline the mortgage process by using electronic commerce to eliminate paper. By leveraging the systems and infrastructure that MERS has already created, we can deliver the registry quickly and cost effectively.

To make it as easy as possible for our existing members to use the MERS® eRegistry, we re-used two industry standards pioneered by MERS:

The Mortgage Identification Number (MIN) is the industry standard life-of-loan identifier. You use the same MIN to register an eNote on the MERS® eRegistry, as you do to register its corresponding security instrument on the MERS® System.

The MERS Organizational ID



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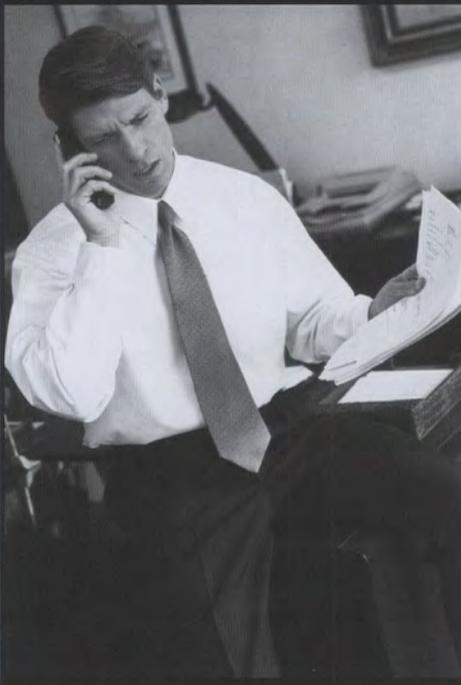
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## technology corner

Number (Org ID) uniquely identifies our members. It is the industry standard alternative to investor seller/servicer numbers. Our members can use the same Org ID for the MERS® System as they do for the MERS® eRegistry.

We also built the interfaces to the MERS® eRegistry in compliance with the MBA's MISMO XML industry data standards.

The result of using these non-proprietary standards is that members and vendors can more easily interface their systems with the MERS® eRegistry, while preserving much of the investment they have already made in interfacing with the MERS® System. Our MERS® eRegistry users also benefit from the investment that we have already made in our first-class help desk, data center, and network infrastructure operated on our behalf

by EDS.

Standards aside, the principal reason why MERS is the solution is its unique position as the industry's utility. Any organization can build a registry. To be successful, however, that organization must convince the investor community that only its registry should be specifically named in the eNotes that those investors purchase. In the future, major investors have committed that they will purchase eNotes where the MERS® eRegistry is named. Additionally, based on our success with the MERS® System, the MBA has formally endorsed MERS as the preferred solution for their requirements for a National eNote Registry.

### A HAPPY ENDING

We kept the commitment that we made to the mortgage industry last

year and delivered the MERS® eRegistry on April 26, 2004.

However, we know, based on our experience with eliminating assignments, that it will take many years for most investors in the mortgage industry to take advantage of the promise of eNotes. We also know that we can't sit idly by and wait for the mortgage industry to beat a path to our door.

We will continue to work closely with our partners like ALTA and the MBA to identify and resolve issues, help educate the rank and file, and create meaningful marketing tools to actively promote the benefits of eNotes.

The moral of this story is that hard work, experience, and determination create the magic behind eNotes, not wishful thinking.

***And you have signing agents nationwide.***

Plus a company that manages an automated signing process from schedule to close.

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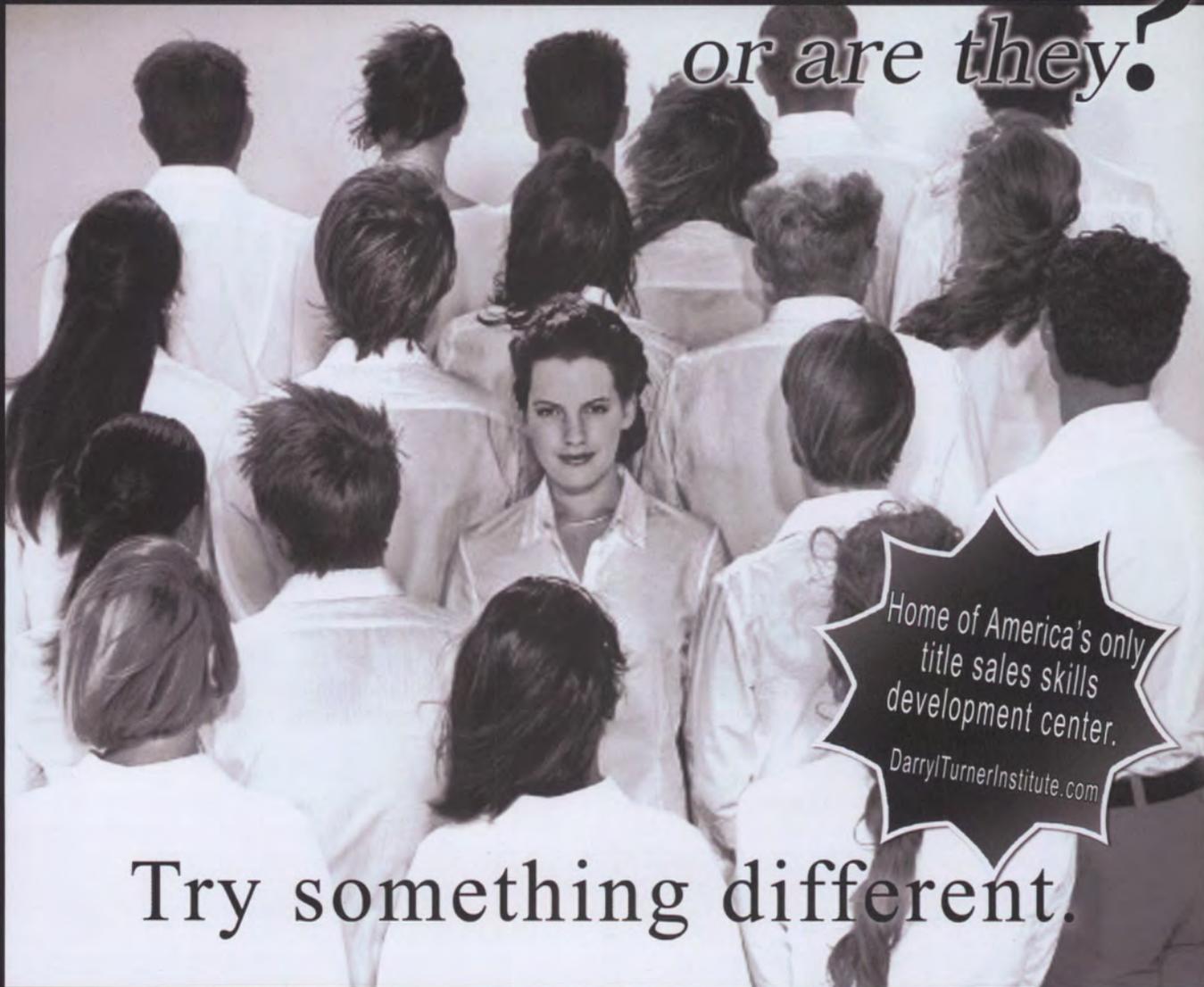
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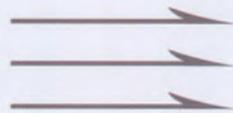
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\* A "New Order" is defined as an order directed intentionally from a Real Estate Agent that has not directed any business in a minimum of 6 months. These new orders are above and beyond servicing existing clients and any orders received monthly attributing to regular customers. "New Orders" are a result specifically from "Prospecting" Real Estate Agents that currently use OTHER TITLE COMPANIES.

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# Abstracter/Agent Survey Focuses on Computer Software

In addition to information on operating results, the recent survey looked at computer software used by title companies and their level of satisfaction with them.

by John D. Haviland and Richard W. McCarthy

**I**n 2003 ALTA's Research Committee conducted the seventh survey of operating statistics and other characteristics of abstracter and title agent members. The information developed in these annual surveys helps in tracking operating results, in comparing one company with another, and in evaluating changes in the industry. All abstracter and title agent members of ALTA are invited to participate. The representative sample of ALTA members that participates in these surveys make the results a credible and reliable snapshot of abstracter and title agent company characteristics. Participants receive a complimentary copy of the results. The sample in the current survey increased to 387 companies from 286 in the previous survey, primarily due to an increase in ALTA's membership.

Each survey focuses on a topical issue in addition to operating results. The current survey covers the types of computer software used for title-related activities and the level of user satisfaction with these computer applications.

John D. Haviland is chair of the ALTA Research Committee - Abstracter/Agent Subcommittee. He can be reached at [haviland@strato.net](mailto:haviland@strato.net). Richard McCarthy is director of research for ALTA. He can be reached at [rich\\_mccarthy@alta.org](mailto:rich_mccarthy@alta.org).

## HOW RESPONSES ARE REPORTED

Gross annual revenue is the primary demographic characteristic of surveyed companies. Answers to survey questions are reported by four categories of 2002 annual revenue. The chart below shows the percent of respondents in each revenue category in the current survey and in the two previous surveys.

Revenue	'00	'01	'02
Less than \$500,000	60%	51%	54%
\$500,000-\$999,999	17%	21%	16%
\$1 million-\$3 million	14%	19%	20%
More than \$3 million	10%	9%	10%
Not reported	—	—	1%

Responses to the survey are also reported by the number of orders received in the preceding calendar year. The chart below shows the percent of companies in the current survey and in the two previous years (based on orders received in 2002) for each of the five categories.

Orders Received	'00	'01	'02
Fewer than 500	20%	13%	16%
500-1,099	23%	23%	21%
1,100-2,499	19%	22%	21%
2,500-4,999	12%	12%	13%
5,000 or more	9%	11%	10%
Not reported	17%	20%	20%

Based on number of full-time employees, companies participating in the current survey are similar in size

to companies that participated in previous surveys. There is an average of 16 full-time employees among all participants. In 2002, there was an average of 18 full-time employees. Employee compensation and benefits, the topical issue explored in the 2002 survey, was probably most appealing to larger employers.

One-half of the companies reporting to the current survey have six or more full-time employees, as did one-half of participants in the 2002 survey. The percent of survey participants in each staff-size category the last three years is:

Full-time Employees	'00	'01	'02
1-2	20%	17%	17%
3-5	34%	25%	26%
6-10	22%	26%	24%
11-25	15%	18%	16%
More than 25	9%	14%	15%
Not reported	1%	—	3%

Average number of full-time employees varies greatly by size of company. Companies with less than \$500,000 revenue reported an average of four full-time employees. Companies with revenue of \$500,000 to less than 1 million reported an average of 11 employees, those with revenue of \$1 million to \$3 million reported an average of 19 employees, and the largest companies, with revenue in excess of \$3 million, reported an average of 83 full-time employees.

# inside ALTA

## OPERATING CHARACTERISTICS OF SURVEYED COMPANIES

As in previous surveys, gross revenue and number of orders received are highly correlated. Among companies that received fewer than 500 orders in 2002, 75% reported that their gross revenue was less than \$250,000. One-half of companies that received 500 to 1,099 orders reported revenue of \$250,000 to \$499,999. Fifty-seven percent of companies that received 2,500 to 4,999 orders reported revenue of \$1 million to \$3 million. More than 60% of companies that received 5,000 or more orders reported revenue in excess of \$3 million.

Although the sources of revenue vary relatively little among companies of different sizes, the largest companies, those with more than \$3 million in revenue, receive a higher proportion of their revenue from title insurance and less of their revenue from abstracts. For the companies reporting, revenue from title insurance accounts for an average of 64% of all revenue. Although revenue from abstracts accounts for an average of 39% of total revenue, only 191 of 387 companies reported revenue from abstracts. Revenue from abstracts ranged from an average of 49% of total revenue among companies with less than \$500,000 revenue, to an average of 17% of the total among companies reporting more than \$3 million revenue.

Revenue from escrow/closing functions accounts for an average of 24% of total revenue, with 286 of 387 companies reporting. Revenue from escrow/closing functions is similar among all company sizes. Only 21 of 387 surveyed companies reported revenue from a law practice, with 17 of these 21 companies in the "less than \$500,000" revenue category. Among these 17 companies, revenue

from law practice averaged 32% of total revenue.

Seventy-four companies reported revenue from other sources. Typical other sources of revenue, volunteered by respondents, included searches and miscellaneous document preparation. These other sources of revenue

*At least 110 of the 387 surveyed companies reported that some work is currently performed by contract workers.*

averaged 14% of total revenue among the 74 companies reporting.

Sixty-eight of the 387 surveyed companies reported that one or more full-time employees regularly telecommutes at least one day a week. The 16 companies with more than \$3 million revenue reported that six employees, on average, telecommute at least one day a week. These telecommuting employees perform almost all jobs in a typical company, ranging from research and searches to marketing and closings and back-office functions such as bookkeeping, accounting, and typing.

At least 110 of the 387 surveyed companies reported that some work is currently performed by contract workers. The variety of work performed on a contract basis is similar to the variety of work performed by telecommuters, ranging across almost all company functions. Searching, examinations, abstracting, and closing are performed by contract workers, along with bookkeeping, accounting, Web development, and other technical support.

## HOW COMPANY IS ORGANIZED

The largest number of survey participants, 45%, are organized as Subchapter S corporations. Another 33% are organized as C corporations, including 42% of organizations with

revenue greater than \$3 million.

Twelve percent of responses are from limited-liability corporations, 6% are sole proprietorships, and 2% are partnerships. Table 4 describes the relationships between revenue, orders received, and type of company.

## OPERATING EXPENSE AND PAYROLL

Among the 263 companies reporting, operating expenses averaged \$1.16 million. Operating expense ranged from an average of \$158,000 among companies with less than \$500,000 revenue to an average of \$6.6 million among companies with more than \$3 million revenue. By number of orders received in 2002, operating expenses ranged from an average of \$115,000 among companies that received fewer than 500 orders to an average of \$5.2 million among companies that received 5,000 or more orders.

Although operating expenses vary greatly by size of company, and even within the various subgroups of similar-size companies, there is a rough equivalence between operating expenses and number of orders received. Typically, operating expenses range from \$250 to \$350 per order received. Overall, 2002 per order expense was similar to 2001 per order expense. Within each category of orders received, median operating expense per median order received, reported to the last three surveys, is:

Orders Received	'00	'01	'02
Fewer than 500	\$239	\$383	\$336
500-1,099	\$292	\$348	\$237
1,100-2,499	\$256	\$273	\$333
2,500-4,999	\$406	\$257	\$328
5,000 or more	\$412	\$319	\$262

# inside ALTA

Total payroll in 2002, with 269 companies reporting, averaged \$600,000. Payroll ranged from an average of \$102,000 among

*Residential (single family) transactions represent 82% of the title business of the 359 companies reporting.*

companies that reported less than \$500,000 revenue to an average of \$3.3 million among companies that reported more than \$3 million revenue. One-half of companies with less than \$500,000 revenue reported \$90,000 or more payroll. One-half of companies with more than \$3 million revenue reported, \$1,788,000 or more payroll.

Among companies that received fewer than 500 orders, payroll averaged \$75,000. Among companies that received 5,000 or more orders, payroll averaged \$2.6 million.

As a percent of operating expense, payroll has accounted for one-half or more of company operating expenses over the last three years:

Payroll/ Operating Expense	'00	'01	'02
	59%	49%	55%

Payroll dollars per order received typically ranges between \$150 and \$225. Within each category of orders received, as reported to the last three surveys, median dollars of payroll divided by median number of orders received is:

Orders Received	'00	'01	'02
Fewer than 500	\$161	\$210	\$234
500-1,099	\$194	\$179	\$147
1,100-2,499	\$139	\$152	\$200
2,500-4,999	\$208	\$145	\$167
5,000 or more	\$213	\$130	\$147

## RELATIONSHIP WITH PRIMARY INSURER

More than one-third of surveyed companies, including 39% of

companies with less than \$500,000 revenue and 48% of companies that received fewer than 1,100 orders, wrote business for only one title insurer in 2002. Another 26% of companies wrote business for two insurers. Fifteen percent of surveyed companies, including 32% of companies with more than \$3 million revenue and 26% of companies that received 5,000 or more orders, wrote business for four or more insurers.

Among the companies that wrote all of their business with one insurer, only 21% reported that they had a contractual obligation to do so. However, among companies with more than \$3 million revenue that wrote all their business with one insurer, one-half percent reported they had a contractual obligation.

## RESIDENTIAL TITLE BUSINESS

On average, residential (single family) transactions represent 82% of the title business of the 359 companies reporting. Among all 387 surveyed companies, the largest number derives 90% or more of all title business from single family transactions. Only 17% of respondents derive less than 75% of their title business from residential transactions

## USE OF TITLE-SPECIFIC SOFTWARE

Survey participants were asked to name the specific computer software applications their company uses for each of five major functions: title production, title plant, closing, financial management, and human resources. Respondents were asked to also report the number of employees who regularly use the software, the date the application was installed or last upgraded, and their level of satisfaction with the software. If you are interested in the results of this part of the survey, please see below for information on how to order the full survey.

## SPECIAL THANKS

ALTA expresses gratitude to the members of the Abstracter-Agent Research Committee for their ongoing guidance and oversight of this survey. The quality of the survey results is ultimately dependent on the conscientious effort of each respondent to report appropriate and accurate information on the topics surveyed, and ALTA expresses its deepest appreciation to the 387 members whose responses made this report possible.

## ORDER THE FULL STUDY

This article is just a summary of the full study. If you have not received a copy and would like to order one, look for the publications order form on ALTA's home page under "Publications/Products." ALTA members can obtain a copy for \$130. The cost for nonmembers is \$255.

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## Iowa Formats Documents Using PRIA's Standards

Fulfilling a need for acceptable across-the-board procedures for preparing land documents, Iowa officials have adopted PRIA's document-formatting standards.

The decision to agree to the provisions, which will go into effect January 1, 2005, came after three years of meetings between the Iowa State Bar Association, the Iowa Banker's Association, the Iowa Land Title Association, and the Iowa County Recorder's Association, among others.

Story County Recorder Sue L. Vande Kamp said the decision was made to ensure local recorders would accept all documents.

"It just makes a lot of sense to have national standards to eliminate confusion and to make sure that documents are not refused at local recording offices," Vande Kamp said. "One of the best arguments we made was that these standards were being promoted by PRIA, which had representatives from the various national associations."

Dubuque County Recorder Kathy Flynn Thurlow said adopting PRIA's standards ensured acceptance by recorders throughout the country.

"PRIA's membership includes all partners in the property records industry, so these standards were looked at by all parties," Thurlow said.

Linn County Recorder Joan McCalmant said the passing of the bill was a result of the hard work of several different groups.

## URPERA Moves Forward With Support From PRIA

With two important provisions supported by PRIA now adopted into the Uniform Real Property Electronic Recording Act (URPERA), the model legislation should be ready to present to individual states for adoption by this fall, a PRIA official said.

"There will be a second floor reading of the Act in August in Portland, OR. Hopefully, states will adopt URPERA with few modifications," said David Ewan, cochair of PRIA's Real Property Law Committee.

PRIA representatives played a pivotal role working with the National Conference of Commissioners on Uniform State Laws (NCCUSL), which developed URPERA. Thanks to their efforts, state commissions that will oversee implementation of URPERA will include a majority of recording officials and use PRIA-based standards, Ewan said.

"These commissions will have the ability to set standards for their individual states. They will not mandate that counties adopt electronic recording, but if you do, you must play by these rules instead of having 3,600 different sets of rules," he said.

Ewan praised the efforts of NCCUSL and PRIA members who worked together on URPERA.

"We want to thank NCCUSL's commissioners for allowing PRIA to participate to the extent we were allowed," he said. "We got a good reception throughout this process."

## PRIA, MISMO Brochure Sets Standard

**P**RIA and the Mortgage Industry Standards Maintenance Organization (MISMO) have developed a standards brochure explaining how MISMO's XML Data and e-mortgage specifications will integrate smoothly with PRIA's e-recording process.

PRIA and MISMO are working together to ensure that their specifications for the real estate finance and property records industry are interoperable, said Mark Ladd, Technology Committee cochair and register of deeds for Racine County, Wisconsin.

The brochure was unveiled at the Mortgage Bankers Association's National Technology Conference in March. It may be found at [www.pria.us](http://www.pria.us).



**Property Records Industry Association**  
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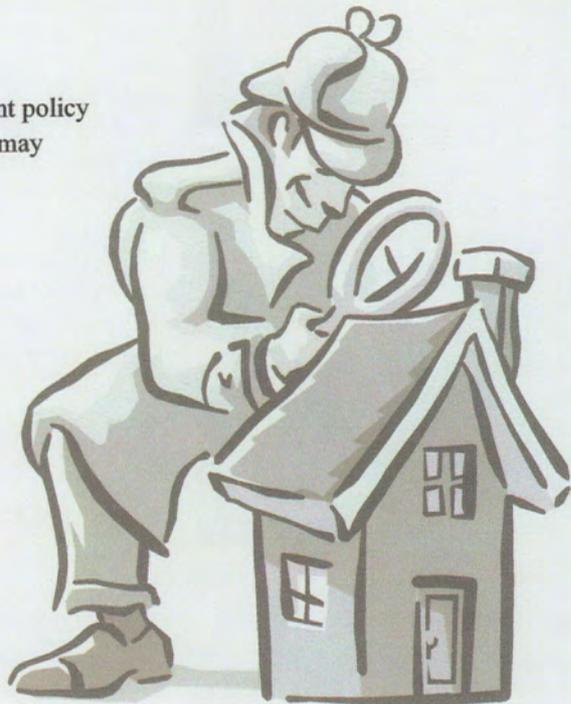
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# member news

## Movers & Shakers

### ARKANSAS

**Leslie J. (Les)**

**Covington** has been promoted to president of Ultima Corp., Hardy. Most recently he was implementation director.



### CALIFORNIA

**Richard A. Kersenbrock** has been named southern California regional director for the National Homebuilder Services Division of First American Title Insurance Company, Santa Ana. He joined First American in 1988 and most recently served as state manager and president of the company's Hawaiian subsidiary.



First American Residential Group, Inc., Santa Ana, has two announcements. **J. Michael Lancaster** has been hired as executive vice president of sales and **Alan S. Greber** has been named senior vice president. Lancaster joined First American in 1991 as chief operating officer for Vendor Management Services, Inc. Prior to joining First American, Greber was founder and president of Security First Title Affiliates, Inc.



Lancaster



Greber

### GEORGIA

**Marc Connelly** has been promoted to senior vice president—LandAmerica OneStop, Alpharetta. Connelly previously served LandAmerica as vice president—corporate sales.

### MICHIGAN

**Kenneth J. Lingenfelter** has been named regional vice president for First American Title Insurance Company, in addition to serving as chief executive officer of Metropolitan Title Company, Howell.



### NEW YORK

**Marvin N. Bagwell** has been promoted to eastern divisional counsel for United General Title Insurance Company, White Plains. Bagwell joined United General in 1996 and most recently was chief regional counsel for New York.



**John E. Haslinger** has been appointed branch counsel and manager for the Buffalo office of Commonwealth Land Title Insurance Company, a subsidiary of LandAmerica Financial Group. Prior to joining LandAmerica, Haslinger served as partner for Hiscock & Barclay, LLP.

### RHODE ISLAND

Commonwealth Land Title Insurance Company and Lawyers Title Insurance Company in Smithfield, subsidiaries of LandAmerica Financial Group, have announced two promotions. **Albert K. Antonio** has been promoted to vice president and Rhode Island state branch manager. He had been serving as legal counsel. **Michael B. Mellion** has been promoted to assistant vice president. Mellion had been serving as Rhode Island state counsel.

### TEXAS

**Janine J. Andriole** has been named senior vice president of First American Title Insurance Company of Texas, a subsidiary of First American.



Andriole initially joined First American in 1997 and most recently served as agency development manager of the National Agency Division.

### VIRGINIA

LandAmerica Financial Group, Richmond, has announced several promotions. **Jim Cooke** has been promoted to vice president—Virginia state production manager. Cooke had been serving as operations manager—central Virginia production. **Jerry Dunnivant** has been promoted to vice president—Virginia state agency manager. Most recently he was vice president—area manager for western Virginia and West Virginia. And **David Walsh** has been promoted to senior vice president—general auditor. Previously Walsh was audit manager of corporate operations and information technology.

## Mergers & Acquisitions

**First American Title Insurance Company**, Santa Ana, CA, has acquired a majority interest in Island Title Corp. of Hawaii.

**First American Corporation** will acquire Media, PA-based T.A. Holdings, Inc., and its subsidiary companies, including Title Alliance®, Ltd., T.A. Title Insurance Company, Title Abstract Company of PA, TA Financial Services, and 1031 Corp.

**First American Title Insurance Company of New York** has acquired the remaining ownership interest in Public Abstract Corp. in Rochester. In addition, it has acquired Modern Abstract Corporation in Manhattan.

# NEW ALTA MEMBERS

**LandAmerica Financial Group**, Richmond, VA, has purchased The Closing Company in central Virginia.

**Lawyers Title Insurance Company**, a subsidiary of LandAmerica, has purchased Universal Title Services, Inc. with offices in McHenry and Crystal Lake, IL, and Channel Island Escrow, Inc. in Oxnard, CA.

**Stewart Title Company** has acquired Whitman County Title in Pullman, WA.

## In Memoriam

**Russell Wood Jordan III**, former EVP, general counsel, and corporate secretary for LandAmerica Financial Group, Inc., Richmond, passed away April 29 at his home in Richmond. He was 63.



Jordan joined Lawyers Title Insurance Corp., a subsidiary of LandAmerica, in 1969 as a title attorney in the headquarters office. After a series of promotions in the legal division, Jordan was named senior vice president and general counsel for LandAmerica in 1988. Three years later, Jordan was appointed executive vice president and general counsel.

He was a key member of the team that created LandAmerica through a combination of Lawyers Title with Commonwealth/Transnation in 1998.

Jordan served on the ALTA Title Insurance Forms Committee and the Committee on Indian Land Claims. He was also past president of the Virginia Land Title Association.

He is survived by his wife of 39 years, Andrea Thomas Jordan; two sons and daughters-in-law, Russell Wood (Rusty) Jordan IV and Rose Mary, Thomas Scott Jordan and Nicole; two sisters, Barbara Jordan McGovern and Sally Pitts Jordan; two grandchildren, Jessica Anne Jordan and Andrew Thomas Jordan; two nieces, Peggy Davidson and Ann Rowell.

## ACTIVE MEMBERS

### Alabama

**Sandra Middleton**  
Monroe Title Co.  
Monroeville

**Joy Nash**  
Anchor Title  
Orange Beach

### Arkansas

**Margaret Bullard**  
Lincoln Abstract Company, LLC  
Star City

### Colorado

**William Bronchick**  
Mile High Title & Escrow, LLC  
Aurora

**Heather Tisdell**  
Quality TSR, LLC  
Denver

**Jason Redman**  
Pacific Title & Escrow, Inc.  
Littleton

**Mike McDonell**  
ABC Title & Closing Services, LLP  
Ordway

### Connecticut

**Heidi Maresh**  
Heidi Maresh LLC  
Farmington

**Gwen O'Connell**  
Hartford

**Kimberly Silverman**  
Connecticut Title Searchers  
Manchester

**Carol Caldes**  
Middletown

**Donna Jones**  
Title Tales, LLC  
Vernon

**Joseph Cascio**  
First Choice Title/Abstract Services LLC  
Wethersfield

### Florida

**Jane Whisnant**  
Brooksville

### Florida, cont.

**Richard Munoz**  
Meridian Title Group, Inc.  
Coral Gables

**Lisa Mitchell**  
Mitchell Land & Title, Inc.  
Defuniak Springs

**Rodger Spink**  
Cooperative Title & Escrow II, Inc.  
Fort Lauderdale

**Onnie Dickerson**  
Southernmost Title, Inc.  
Key West

**Frank Camperlengo**  
Security First Title Partners  
Largo

**Victor Rodriguez**  
Miami

**Roxanne Mastrantonio**  
AAA Quality Title Services  
& Escrow Co., Inc.  
Ocala

### Georgia

**Jerald Crowe**  
Jerald Dowman Crowe, LLC  
Atlanta

**Leonard Bohannon**  
Georgia Residential Resources Inc.  
Canton

**Rita Davis**  
Heritage South Title, LLC  
d/b/a The Closing Place of Canton  
Canton

**John Halcomb**  
Fairway Title Agency, Inc.  
Cumming

**Laura Van Otteren**  
LVO Real Estate Title Abstraction Services  
Douglas

**Aubrey Jones**  
Hazlehurst

**David Ranallo**  
Titleworks, Inc.  
Marietta

### Illinois

**Dennis Nolan**  
Prestige Title, LLC  
Bartlett

**Jay Jacobson**  
Alliance Title Corporation  
Chicago

# NEW ALTA MEMBERS

## **Illinois, cont.**

**Gary Swick**  
Montgomery County Title Co.  
Hillsboro

## **Indiana**

**Angela DelliCarpini**  
D & S Abstracting & Notary Services  
Avon

**Sonja Teasley**  
Absolute Title  
Indianapolis

**William Zander**  
Alliance Abstracting  
Indianapolis

**Todd Dailey**  
Fax Mobile Abstracting, Inc.  
Mooresville

## **Iowa**

**Shelly Cole**  
InfoQuest, LLC  
Waterloo

## **Kentucky**

**Kim Lindsey**  
Prestige Title Company II, LLC  
Cave City

**David Campbell**  
Corbin

**Carol Smith**  
Title Concepts, Inc.  
London

**Mark Mattingly**  
Alex Research Associates  
Louisville

**Sonya Brown**  
Commonwealth Abstract  
& Title Services, Inc.  
Nicholasville

## **Louisiana**

**Charles Sonneir**  
Vermillion Title & Abstracting Company, Inc.  
Abbeville

**Jodie Pearl**  
Louisiana Title Services  
Baton Rouge

**Robert Percy**  
Percy & Percy  
Gonzales

## **Louisiana, cont.**

**Debra McKinney**  
Tangi Title, L.L.C.  
Hammond

**Fanned Seidel**  
Seidel Law Firm  
Lafayette

**Bernadette Hawkins**  
Classic Title, L.L.C.  
New Orleans

**John Hood**  
Hood Title Company, Inc.  
Ruston

**Louis Buckner**  
Louis Buckner, Abstract & Title  
Tallulah

## **Maryland**

**Nancy McNealy**  
Consumer Real Estate Title, Inc.  
Beltsville

**Bobby Lee**  
Olde Powtownmack Title & Escrow Co.  
Bethesda

**Jakieta Pinkney**  
K & S Title Services, Inc.  
Dundalk

**Michael Epps**  
Title Tree, Inc.  
Gwynn Oak

## **Michigan**

**Amber Gerber**  
Freedom Title Agency Services  
Ann Arbor

**Al Rice**  
Midwest Title Corporation  
Dearborn Heights

**Dean Fradle**  
RJ's Abstracting  
Roseville

**Kimberly Gibbs**  
Royal Oak

**Mark Bello**  
National Title & Escrow, Inc.  
Southfield

## **Massachusetts**

**Howard Blume**  
Charlestown

**Ann Mabardy**  
Natick

**Pauline Dixon**  
Pembroke

## **Massachusetts, cont.**

**Andrea Lanata**  
Meridian Title & Research, LLC  
Plymouth

**Stanley Kaplan**  
Commonwealth Title  
Sudbury

**John McDermott**  
John D. McDermott Title Examination  
Services  
West Roxbury

## **Minnesota**

**Joan Kopp**  
All Star Title & Abstract Co., LLC  
Osakis

## **Missouri**

**George Nichols**  
Nichols Title Co., Inc.  
Lamar

## **Nebraska**

**Thomas Dover**  
American Title & Escrow, Inc.  
Norfolk

**James Thalken**  
Thalken Title Co., LLC  
Ogallala

## **New Jersey**

**Irene Papisvvas**  
Greco Title Agency, LLC  
Edison

**Rogelio Santos**  
USTA LLC  
Glen Gardner

**Giovanni Paul**  
First Priority Title Agency, Inc.  
Hackensack

**Yvette Nelson-Quinones**  
New Jersey Land Services Title Agency,  
Inc.  
Milltown

**Khatib Abdelaziz**  
Closers on Call, LLC  
Somerset

## **New York**

**Cheryl Mittel**  
Titleserv, Inc.  
Woodbury

## **North Carolina**

**Stephen Smith**  
SBC Title Company  
Eden

**North Carolina, cont.**

**Kenneth Beltran**  
Tri-State Title Solutions, Inc.  
Raleigh

**Andrew Stallings**  
First Priority Services, Inc.  
Weddington

**Ohio**

**Jack Pozenel**  
Pozitive Research, Inc.  
Centerburg

**James Magee**  
Magee Title Agency, LLC  
Cincinnati

**Raymond Bullock**  
Bullock Titles  
Dayton

**Jerry Gillespie**  
J & M Abstracting  
Dayton

**Christina Cartwright**  
Landmark Title Agency  
Dayton

**Gary Grusha**  
Mineral Ridge

**Vince Watkins**  
World Title Agency, Inc.  
Strongsville

**Jeffrey Roth**  
Lawyers Title Agency of Wyandot County,  
Inc.  
Upper Sandusky

**Oklahoma**

**Ron McCord**  
First Mortgage Company, LLC  
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