Where are we going:
Coming together as an industry
SoftPro’s Award-winning Closing, Title and Escrow Software combines cutting-edge technology with outstanding support to make your business run more efficiently, while boosting your revenue. It is fully customizable and scalable so you can work the way you want, yet also conforms to the latest regulations and ALTA’s Best Practices, so you can keep compliant within our ever-changing industry.

Trust SoftPro to be your superhero software partner for the new Closing Disclosure Form, coming August 1, 2015.

For more information visit [www.softprocorp.com](http://www.softprocorp.com) or contact SoftPro Sales at 800-848-0143 or sales@softprocorp.com
A Revolutionary Event
Virginia Land Title Association would like to extend our gratitude to all of our guests for attending the 2015 Annual Convention.

The Three Day Delivery of Disclosure Rule(s)
Adopted in January 2014 and effective for loans applied for on and after August 1, 2015, the CFPB’s TILA-RESPA Integrated Mortgage Disclosures Rule ("the Rule") includes numerous compliance issues for title companies and closers of consumer mortgage loans.

Turning Compliance Headache into a Marketing Advantage
By now, the only settlement services professionals unaware that compliance has become a Very Big Deal for mortgage lenders are those who have been living in a galaxy far, far away.

Ask For the Business!
With all of the changes in our industry, our focus recently has been on the big C... Compliance.

Road to Compliance
An ever-changing environment, emphasizing a focus on security, in Title & Settlement has many in the industry wondering whether or not they can become compliant with the requirements laid out by ALTA Best Practice Pillar #3 and the Gramm-Leach-Bliley Act (GLBA).

Now You See It, Now You Don’t
State legislators and attorneys general across the country became aware, for the first time in many years, about the public viewing and using the public land records during the mid-2000s.

It’s Time to Talk Title — Owner’s Title
The Dodd-Frank Wall Street Reform and Consumer Protection Act created the Consumer Financial Protection Bureau ("CFPB") and charged the CFPB to create and implement a regulation that integrates the mortgage loan disclosures under the Real Estate Settlement Procedures Act of 1974 and the Truth-in-Lending Act.

A Cautionary Tale
This piece is based on a matter currently in litigation in state Court. It is something anyone who insures title to foreclosed property should consider.

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The mission of the Virginia Land Title Association (VLTA) is to promote communication and to provide education throughout the real estate and title insurance industries. The mission includes promoting standards and regulations that increase the effectiveness of the industries. Legislative initiatives and educational programs are primary aspects of the VLTA’s work. Leadership in ethical practices and standards is an integral part of its members’ initiatives and educational programs are primary aspects of the VLTA’s work.

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Growing up in California, I was one of those kids who got picked last on the team during recess. But in high school, I joined the swim team and water polo team. Water polo in particular is a really tough sport. It is a full contact sport, and you are treading water for the entire game—there is no bottom to stand on.

When I joined, I was one of the worst players, but I worked hard and went to every practice. My first year, I was voted the Most Improved Player. Later I became the Most Valuable Player and Team Captain. I lettered in my sophomore year, which was a really big deal, and eventually I earned the Coronet Award for athletics—the highest award my school had to offer. I was an “aqua jock”!

During one of our water polo games, our school photographer came by to take some black and white photos of the game. She took one of me, making a shot, and later presented me with a copy of the photo. When I saw it, I was amazed. It was such a cool photo! My eyes were like lasers, fixed on the goal. I was palming the ball, and my arm was cocked back to take the shot. Beads of water were flying off the ball, and my bicep was the size of Texas. The only other person in the photo was my defender, who was off in the distance, unable to prevent my winning shot.

Well, when I saw that picture, I was amazed—I couldn’t believe it was me. In spite of all those great awards I had received, I thought very little of myself in high school. I looked like that? Wow! I couldn’t believe it! But here was the proof, in black and white—literally. I was so encouraged by that picture, I framed it.

Fast forward now to my second law job in Virginia. I still had that picture, framed and sitting in my office. Why? Because it encouraged me—it reminded me of what I could do. Well, one day another associate moved into the “cell” next to mine, so I went over to introduce myself. As we talked I learned that like me, he was from California. And as we talked some more, he mentioned that he played water polo in high school. Well, upon hearing that, I waltzed on over to my office, got my favorite picture, and handed it to him.

“What do you think of that?” I asked.

“No way!” he said. I’m thinking to myself: I look cool, right? He must be impressed. But as he continued, it was evident that he was not impressed with how awesome I looked.

“What?” I asked.

“I’m the other guy in this photo.”

Amazing! He was the other guy, my defender, in the photo. What are the chances that two people who get captured in a photo playing against each other in a water polo game in California end up working side-by-side in Virginia at the same law firm? Mind-blowing, right?

So what did we do? We went around the office, blowing people’s minds! We showed them the photo and asked, “Guess who?” Then they would say, “No way!” We were instantly famous.

Why do I tell this story? Well, we are in a tough game right now with all the changes to our industry. It’s a little tougher than water polo, and we are treading water, trying to stay afloat. Perhaps like me, you are thinking very little of yourself, wondering if you can make it, wondering if you can stay afloat with all that is going on. If that is how you picture yourself… don’t.

When I look around this room at abstractors and title and settlement agents, I see a lot of “title jocks” in the room. And when I look at my fellow underwriters and vendors and other service providers, I see a lot of coaches and trainers in the room.

And so Takeaway No. 1 is to find something that encourages you. For me, it’s God and family. Some people feel called to the mission field; I feel called to my Company, Old Republic, and to this industry. And that encourages me.

My family also encourages me. I’m not talking about my children, I am talking about all the faces at

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Kevin T. Pogoda, Esq., VCTE, VCTSA
VLTA President 2015-2016
Old Republic National Title Insurance Co.
Manassas, VA

Kevin Pogoda’s acceptance speech given at the VLTA Convention in Williamsburg
Best Practices implementation is coming to a head; with the RESPA-TILA integration deadline just weeks away, lenders are now focused on finalizing their plans with respect to third-party vetting. ALTA’s Best Practices are a great template for agencies to use when preparing for this process — but they do not offer a complete picture for Virginia’s businesses. Lacking state-specific information, local lender input, and direction concerning scaling the Best Practices to various business sizes, the Pillars are incomplete. This is where VLTA has taken up the cause on behalf of our members.

In 2015, VLTA has taken several steps to help our members connect with the information and resources they will need to implement Best Practices soundly and affordably. Our first effort was to draft and publish the Virginia Implementation Guide for the Best Practices, which outlines Virginia laws and regulations specific to each Pillar. This guidebook will serve to educate third parties on the Virginia industry (so that you don’t have to).

VLTA’s Board of Directors has also worked diligently to connect with smaller, local lenders to gain insight into their proposed practices and requirements with respect to upcoming changes. These insights are shared with members in our monthly advocacy update. At our Annual Convention, VLTA offered a Policies and Procedures Manual Workshop to help members resolve gaps in their manual and work toward completion. The workshop featured sessions on using compliance as a marketing tool — and we were thrilled to welcome over 50 agencies to this special event.

Going forward, VLTA is working to establish a small business taskforce to help promote and protect Virginia’s small businesses. The taskforce will collaborate on several projects, such as the drafting of an advocacy toolkit; small business marketing spots; and the identification of “Model Businesses.” These model businesses will serve as examples of how to scale the Best Practices based on business size.

VLTA makes small businesses a priority because we know that in Virginia’s unique industry environment, it takes a local professional to get the job done right. We know that local examiners have better access to land records, and that local agents maintain closer relationships with local lenders. We know that small businesses take the time to become invested in each and every case, offering the consumer that personal touch you can’t find anywhere else, and reducing the likelihood of claims.

What can we accomplish in 2016? Join our Taskforce, and help us shape the vision of this critical group! Help us help you. Email us at vlta@vlta.org to sign up!

Special Update

In a statement issued June 18, 2015, the Consumer Financial Protection Bureau (CFPB) announced a proposal to delay implementation of the TILA-RESPA Integrated Disclosures (TRID) rule until Oct. 3. Read more at www.vlta.org/special-report.
As I write what will be my last article as the Editor of ‘The Examiner’ I reflect on the current state of this industry that we all know and love. As we all take in the CFPB’s decision to postpone the implementation date two months, to October 3rd, 2015, we regroup and continue our plans with our lender (soon to be called “creditor”) partners.

There are multiple collaboration products on the move, gearing up for the eventual implementation date of TRID. Our software vendors are also working with these closing collaboration products to make sure they work seamlessly come implementation day.

**Closing Insight** is a product developed by Black Knight Financial and RealEC Technologies and is a system that has been adopted by Bank of America, BB & T and Chase just to name a few. It is a comprehensive technology solution that is designed to streamline the closing process and support the RESPA-TILA Integrated Mortgage Disclosures rule (TRID). A key feature of Closing Insight is the Closing Collaboration Portal, a secure, neutral platform where settlement agents and lenders can communicate closing needs, from fee refinement to settlement statement preparation to closing package delivery.

http://www.bkfs.com/RealEC/DivisionInformation/SettlementAgents/ClosingInsightSettlementAgents/Pages/default.aspx

**ClosingCorp** - Their claim to fame is that they own and operate the premier source of intelligence for closing costs and service providers in the U.S. residential real estate industry. This is the collaboration option that Wells Fargo plans to use. Through innovative solutions, progressive technologies and strong alliances, the company delivers timely, accurate and transparent results that help optimize closing processes and services. It delivers actual data, straight from a proprietary database of more than 12,000 real estate service providers. With their **SmartGFE** technology, they are able to offer a compliance guarantee that protects lenders from RESPA tolerance violations. This technology was developed nearly five years ago and has been a staple with lenders ever since. **SmartGFE** is expected to be replaced with their new service called ‘LumenRMS’ www.closingcorp.com

**Closing Bridge (BeesPath)** is a collaboration solution that settlement agents can employ and offer to their lender clients or it can work in the reverse as well. It is easier, faster, and more efficient communications with one simple cloud-based platform. BeesPath gives you a place to securely collect information from your customers, communicate in real time, and send sensitive information from any device. It has a chat feature that allows you to instantly chat with buyers, sellers, settlement agents, loan officers, or anyone else involved in your transaction, in real time, affording you the ability to increase productivity. You can deliver and receive data files to increase loan accuracy and automate manual processes. Closing Bridge also allows you to exchange large files or sets of documents easily and securely to accelerate processing. Lastly, the platform offers secure messaging so you can send, reply, and forward securely without the clunk and hassle that comes with encrypted email to minimize processing delays. www.beespath.com

I hope you find this information helpful, and that you continue to push forward in your preparations for what now is October 3, 2015. Use this time wisely to get prepared because the change that is coming is immense. Your lender, and especially your realtor, partners will need a strong, prepared, compliant and Best Practice certified Settlement Agent to lead the way.

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**About the Author**

**HEATHER L. MEAHL**, is the outgoing editor of the Examiner and the incoming Treasurer of the Virginia Land Title Association (VLTA). She also volunteers on the Closing Committee and the Education Committee for the American Land Title Association (ALTA). She is an ALTA certified National Title Professional (NTP) – one of only 3 in the Commonwealth of Virginia and 1 of only 49 in the United States. She also holds her Virginia Certified Title Settlement Agent (VCTSA) certification as well as being a Licensed Title Underwriter.
Virginia Land Title Association would like to extend our gratitude to all of our guests for attending the 2015 Annual Convention. With over 275 attendees across three jam-packed days, this event was genuinely the most successful event we’ve seen in over a decade. In this time of change, it is important for all of us that we come together as an industry, and it was clear that you think so, too.

We were pleased to see so many of our guests take advantage of the Best Practices Manual Workshop, sponsored by RynohLive. We hope that our agents found the gap analysis process helpful. Special thanks to Kim McConkey from HA&W and all of our hand-picked Pillar Consultants for making this workshop a success!

Our education sessions were filled to the brim with agents, examiners, underwriters, and clerks all looking to ensure they stay on the cutting edge of our industry. Special thanks to Stewart Title, agent education sponsor; First American Title Insurance Company, marketing education sponsor; and Simplifile, Clerks education sponsor.

Our event opened with a fun and exciting Welcome Reception, sponsored by Fidelity National Title Insurance Company, and we continued at the Kings Arms Tavern with a tribute to VLTA's grassroots advocacy. Entertainment was generously sponsored by Westcor Land Title Insurance Company. Congratulations to Lisa Owen, winner of the Welcome Reception iPad drawing sponsored by TitlePac, Inc.

On Friday morning, we were welcomed by our Keynote Speaker, Pat Stone, of WFG National Title Insurance Company. Pat shared with us his industry prognostications and advice on how to survive this ever-changing industry landscape. At lunch, we were joined by Jason Blevins of SoftPro who impressed us with their strategy for responding to the new closing disclosure. We enjoyed a product demonstration from Johnson Mapping Software, and rolled into an afternoon of prize giveaways. Thanks to Kaufman & Canoles, PC for sponsoring our second iPad drawing.

On Saturday evening, we welcomed our new Board of Directors at a beautiful Gala sponsored by Old Republic. I am sure you will join me in welcoming these tremendous volunteers to our Board. Over the next year, they will give thousands of hours of service to our industry. I encourage all of you to join a committee, offer your time and input, and stay involved. VLTA is your professional Association, and we need your voice.

VLTA has worked hard to bring industry stakeholders to the table. This event was certainly a tribute to these efforts. With dozens of Clerks of Court, a contingency from the Bureau of Insurance, a host of VCTEs and VCTSAs, and our very own agents, underwriters, examiners, and associate members, we were honored by the presence and support of so many. We look forward to welcoming you all on October 2nd in Richmond at our Fall Seminar. Stay tuned for information on registration at www.vlta.org.
From the President, continued

my table here tonight—my family at Old Republic. I’m talking about my boss, Herb Walton, and I’m talking about Morty and Chris and Yoli and Kay and Megan and Stephanie. I don’t need a picture of me playing water polo anymore, because when I look at you guys, I am encouraged.

What encourages you? Is it God and family, or something else? Is it your clients, your employees, your kids, or the value of what you do and how important it is to our economy? Whatever it is—find it, frame it, fix your mind upon it. Do not neglect the discipline of speaking that encouragement to your heart every day.

Takeaway No. 2 is this: prepare to be amazed! There are a lot of amazing changes to our industry, to your operations, to you as you navigate through all these new rules. Some will not want to embrace change. Some will not be able to afford the change. These groups will leave the industry, and when they do, they will leave business on the table for you and me. So for us in this room and in this Association, it means opportunity. But it will be a team effort. Together, we will tread water and stay afloat. Together, we will get new business. Together, we will win. And that will be amazing.
Speakers & Presenters

Lisa Tully, Esq.
Fidelity National Title Group

James L. Windsor, Esq.
Kaufman & Canoles, PC

Dan Wold, Esq.
Old Republic National Title Insurance

Nathan Burch
McLean Mortgage Corporation

Tarek Sharif
LodeStar Software Solutions

Liz Steele, Esq.
Stewart Title Guaranty

Stephen Gunther
Professional Speaker, formerly of TRIG

Robert Brooks, Esq.
Middlesex Title Company

Jim Paolino
Lodestar Software Solutions

Cindy McGovern, PhD
Orange Leaf Consulting

Richard Curd
Title Industry Assurance Company

Kevin T. Pogoda, Esq.
Old Republic National Title Insurance

Brandon Ramsey
George Mason Mortgage

Carol Foglesong
Asst. Comptroller, Orange County, FL

Pat Stone
Williston Financial Group (WFG)

James Pickral
VLTA Lobbyist, Pickral Consulting

Justin Ailes
American Land Title Association

Marc Arrowood
Simplifile

Tom Klein
WFG National Title Insurance Company

Dick Reass
Segin Software & RynohLive

Jason Blevins
SoftPro
The first issue to resolve is responsibility for delivery of the closing disclosure (“CD”) to the consumer which is not the same issue as responsibility for its content. (The latter may be shared between lender and settlement service provider.) The Rule is clear that the creditor (nee lender) must deliver the CD to the consumer at least three days in advance of closing. A settlement service provider may undertake this task on behalf of the lender, but, in so doing, assumes a liability that it does not have under the Rule. The lender must still make sure that the provider complies with the Rule’s timeframes. 12 C.F.R. § 1026.19(f)(1)(v).

[Note that most Code of Federal Regulations cited here are not effective until August 1, 2015, including this one.] This would be another issue of lender oversight of your compliance with regulations for which it has responsibility. If you undertake the delivery of the CD, be sure that your Best Practices-compliant policies and procedures manual documents how you will perform this task.

The delivery of the CD must occur at least three business days ahead of closing. That is three calendar days (not 72 hours) in which the creditor is routinely open for business. This is different than the TILA rescission rule which counted Saturday automatically. Under the Rule, it is reasonable to exclude Saturday from any three day calculation, and, of course, Sundays and Federal holidays are excluded (even if the creditor is open). [Note that some state holidays would also be excluded if the creditor closes its offices on those days.]

The rule treats delivery as an actual event. That is, delivery is effected when the CD is placed in the hands of the consumer/borrower in fact. This is stated in reverse language: “If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.” 12 C.F.R. § 1026.19(f)(1)(iii). In other words, if the CD is sent by regular mail, add three days to the requisite time required by the Rule. Deemed delivery and receipt (three days after mailing) must precede the loan consummation by three days. That means six business days before closing are needed for disclosures sent by mail. Proof of delivery is not necessary but having such will defeat a claim of non-compliance with the rule. Not clear from the rule but probably true is that actual delivery, acknowledged by the consumer’s signature to a delivery receipt even through the mail, will begin the three day clock at the time of acceptance of delivery even if the mailed item sub-rule would have been in effect. [Note that electronic forms of delivery may...
be used essentially providing instantaneous delivery. The big caveat here is that the consumer must agree to such delivery in advance, provide an e-mail address, and provide other affirmations under law other than the rule itself. Should there not be consumer acceptance of electronic delivery, then such delivery works just like the use of the mail system. 12 C.F.R. § 1026.17(a).]

If something changes going into the closing that affects the CD already delivered, there may have to be re-disclosure. If so, the three days delivery sub-rule is fully back in play. However, most of the old-day tolerances/variances are matters that affect the lender’s initial loan estimate and it has to be revised and redisclosed. Permitted variances may be corrected at closing. These three items, however, do require a revised CD and a new three day delivery period: (1) The annual percentage rate becomes “inaccurate” (varies by more than one-eighth of a percentage point from original calculation, § 1026.22(a)); (2) The loan product changes (e.g., the loan changes from variable to fixed rate); or (3) A prepayment penalty is added. 12 C.F.R. §1026.17(f)(2)(ii). [Note that these three items would generally be included among the original CFPB disfavored loan terms with the original ‘Know Before You Owe’ program.]

As a final word, the devil is in the details. If in doubt, be sure you seek advice from a trusted source who is also knowledgeable. It is easy to find one or the other, but you need someone who is both.

About the Author

R. MICHAEL SMITH, a graduate of the University of Virginia School of Law, is currently Underwriting & Claims Counsel for Conestoga Title Insurance Co., located in Lancaster, PA. He is a former Virginia State Counsel for national underwriters and a former Chairman of the VLTA’s Education Committee. He is a frequent speaker at VLTA and other title industry seminars, and continues to contribute to the VLTA Examiner. He coordinated the Jamestown 400th Anniversary Program in 2007. Please contact him at msmith@contitle.com.
By now, the only settlement services professionals unaware that compliance has become a Very Big Deal for mortgage lenders are those who have been living in a galaxy far, far away. To be fair, it has always been important, but the alphabet soup of CFPB, ATR, QM and, now, TRID (TILA-RESPA Integrated Disclosure Rule) has made getting and staying compliant priority one for even the most stubborn mortgage lending company. Additionally, lenders are well aware, thanks to the CFPB’s April 2012 bulletin, that they will be held accountable for the actions (or inactions) of their service providers. It all adds up to a climate where risk mitigation rules the day.

Naturally, this has had a serious impact on the title and settlement services world. Suddenly, phrases like “NPI” (thank you, Gramm-Leach-Bliley Act) or “Best Practices” (ALTA version) are perennially on the lips of settlement services owners and executives nationwide. A settlement services business that isn’t willing or able to prove that it is following the rules and, more important, helping its clients follow the rules, will soon find that it has few clients left to help anyway.

The enterprising and the entrepreneurial have rightfully grasped this trend as an opportunity to win business. What lender wouldn’t want help staying compliant? What mortgage business would want to risk audits, fines and possibly even repurchase demands because of sloppy or unprepared vendors? There’s a very real opportunity for title businesses to differentiate themselves today. Accordingly, an increasing number of settlement services firms are making the claim that they are “Best Practices Certified,” or “compliance focused.”

However, not all certified, focused businesses are created the same, unfortunately. So what can you do to cut through the background noise? How can you let lenders know that it is your services they need to be sure they’ve picked a reliable partner? It starts with marketing fundamentals.

Be real. Really.

Sounds simple enough, doesn’t it? It is, but some firms don’t get it. A business that claims to be “Best Practices Certified” just because the marketing director added the phrase to the website is not necessarily certified. In fact, doesn’t “self-certification” defeat the very purpose of becoming certified? Yes, title agencies and underwriters already go through a gauntlet of vetting and licensing requirements just to open their doors and partner with underwriters. There were plenty of state and federal requirements before the CFPB came along. Chances are good that your title-related business didn’t just start being careful about non-public information or legal requirements in 2012. However, the requirements being demanded of lenders have ratcheted up some of these standards. To the title business owner who has done his/her best for decades to do the right thing, there may be little difference between “Best Practices Certified” and “Always does his/her best to do the right thing, but we all make mistakes.” To a mortgage lender facing potential exposure to the tune of thousands

BRiAN RiEGEr
Principal
True Impact Communications
or even millions, there is a world of difference. Don’t claim it unless you can truly back it up.

**Be ready to prove it. Again and again. In detail.**

You already know that mortgage lenders, by their very nature, are cautious creatures (at least, their vendor managers, compliance agents and quality control people are). Your word may be your bond, but it’s not enough for an existing client or future customer. Not only do your processes and procedures need to be compliant and help lending clients be compliant; they need to be documented comprehensively and clearly as well. If you don’t like being vetted or audited and are unable to accept that this is the “new normal,” it may be time to look into a new career. Lenders are being held accountable for active oversight of their partners. That means third party certification. That means lender audits. That means it’s time to clean up the office a bit, maybe update the receptionist desk and waiting room…as well as your document storage system and staff workstations. You’re going to have guests. More frequently than ever before. They’ll be walking around the outside of your office. They’ll be asking about access to NPI and servers. And they will be very interested in how you conduct your business overall. View it as an opportunity to prove yourself. If nothing else, such a worldview might save you a little frustration.

**Differentiate your differentiators by being different.**

As an industry, we tend sometimes to cluster around similar marketing terms. Or, more adequately, marketing clichés. Technology companies love to market themselves with words like “streamline,” “efficiencies,” “cutting edge,” “accuracy” and the like. Those settlement services businesses savvy enough to use their compliance prowess as a strategic advantage tend to promote “certification,” or the fact that they are “compliance partners.” However, “compliance” and “certification” are fairly generic terms. Yes, TRID or protecting NPI might be the flavor of the month, but “compliance” goes far beyond the latest enforcement trends. There are hundreds of laws, rules, ordinances, regulations and orders with which a mortgage lender has to comply. To the extent that you can (without giving away the recipe for your secret sauce), be specific. How will you ease a lender’s concerns about risk, liability and compliance? Is it just TRID for which you’re ready? Make sure your marketing materials, sales pitch and social media messaging set you apart. Avoid overbroad or blanket assertions. If marketing is to be believed at 100% face value, about 100% of those title companies marketing to lenders are compliant; help lenders get compliant and have been certified. What, exactly, they’re compliant with and by whom or what they’ve been certified…well, that’s not always so clear.

**Make it all about them!**

Another lesson from marketing 101: your clients don’t really care that much about you. Sorry. At least when it comes to business, they care only about what you can do for them. They care about their specific needs. To some degree, obviously, you have to spell out your capabilities in order to show how you can meet those needs. But make your pitch specific. If the lenders in your target market are most concerned about potential repurchase demands, talk about what it is you do in your business that will all but ensure that the upstream investors or GSEs won’t be forcing a buyback based upon what YOU did for your lender (correct and complete data, etc.). If your larger lending client is cutting back on the number of title businesses it uses in order to mitigate its risk, show them how you can safely and effectively be one of those aggregators or vendor managers. Being ALTA Best Practices certified is great, but it only tells part of the story. Show your lending market how, specifically, your business can help theirs.

Ours is an industry that struggles to differentiate. State and federal laws and regulations make it difficult to compete based upon price or other factors commonly used to compete in other industries. Although the last few years have undoubtedly been a headache for the collective mortgage industry, the new emphasis on compliance really does provide the title industry a chance to shine. If you’re going to make the investment to up your compliance game, spend a little extra time to make sure your prospects and clients know it as well.

**About the Author**

BRIAN RIEGER is a reformed litigator with twelve years of public relations and marketing communications experience. He has served the title and settlement services industry for ten years, providing marketing and PR counsel for mortgage lenders, national underwriters, commercial real estate firms, technology developers, title agencies and vendor management companies. He is the principal of True Impact Communications, a national marketing communications and public relations consultancy serving clients of all sizes across the mortgage, title and settlement services industry. He has been published in ALTA’s Title News, TAVMA’s quarterly newsletter and Scotsman Guide, and has ghost-written articles published in Mortgage Banking, HousingWire, Origination News, Title News, Secondary Marketing Executive and more. Brian has presented on marketing and public relations topics at the TAVMA annual conference, ALTA Annual Convention, ALTA Business Strategies Conference, The National Settlement Services Summit, the Ohio Land Title Association Annual Convention and several local seminars.

You can learn more about Brian or read his blog on similar topics at [www.trueimpactcommunications.com](http://www.trueimpactcommunications.com). You can contact him at 330-348-1678 or Brian@TrueImpactCommunications.com.
Ask For the Business!

With all of the changes in our industry, our focus recently has been on the big C... Compliance. While this is hugely important and deserves the attention it is getting, we need to remember that we have nothing to comply with until we have an order to process. Which means that we need to continue to stay focused on growth as well as compliance.

One easy way to grow is simply to ask for the business.

Have you ever noticed at a fast food restaurant that they always ask “would you like fries with that?” or “would you like the meal deal?” And at sit-down restaurants, only the best waiters and waitresses will bring you the dessert menu and make a suggestion before you even have a chance to ask for your check. Don’t get me started about the dessert cart! And what about the carwash? Surely you’ve been asked if you want a wax for only $2 more. These are all ways that you are being asked for your business, some more subtle than others. And it works too, doesn’t it?

We’ve worked with clients who, believe it or not, don’t ever ask for the business. I know, that sounds crazy, right? But it’s true. They will say something like “if there is anything I can do to help, please don’t hesitate to call me.” Or they might venture more boldly, “I’d love to work with you” if they are feeling really brave. But this isn’t actually asking for business!

Why are some people reluctant to actually ask for business?

We believe there are two basic reasons. The first, they are actually unaware that they are not asking for anything. They assume that by softly putting it out there, the potential client knows what they mean, that the universe is populated with mind-readers. Well, you know what they say about assuming things, right?!

And two, the fear of rejection. People are afraid of the word “no.” Well, let’s examine that. Have you ever been told “no?” Of course you have, we all have! And we survived. No is simply a no for now, because the answer is always “no”...until it isn’t.

So, with all of the changes to the industry at the moment, one thing should remain the same: our focus on growth and business development! So...

Your mission, should you choose to accept it.

Ask at least one person for their business today! Here are a few ways to ask...just to help you get started:

1. First day of class:
   “Now that we both have a better feel for what I can do for you and how we might approach this situation, shall we get started?”

2. 1st degree black belt:
   “Since it looks like we can really be a big help to you, can I open a contract for you?”

3. Super Ninja Jedi Level:
   “Could I open an order for you today?”

Give it a try...you just might surprise yourself!!

As we say at Orange Leaf Consulting...GROW BIG OR GO HOME!!

Orange Leaf Consulting specializes in helping title companies to grow their business. For more information on how you can GROW BIG, please visit www.orangeleafconsulting.com or 415.277.5901 to schedule a free consultation!

About the Author

DR. CINDY holds her Masters Degree in Marketing, and her Doctorate Degree in Organizational Communication, with an emphasis in Leadership and Ethics. Combining her academic experience and her years of business consulting, she has a deep understanding of how to shape behavioral change throughout all levels of an organization. A highly sought-after speaker and coach to organizations country-wide, Dr Cindy has presented at both national and international conferences on the topics of: Organizational Change, Conflict Resolution, Consultative Sales, Values Based Selling, Communication, Management, Leadership, Sales Management, and Collective Bargaining.

CINDY MCGOVERN
Founder,
Orange Leaf Consulting
In order to achieve your goal of being compliant and providing your clients with a service that protects their sensitive, non-public personal information (NPPI), the best way to approach this objective is to break it down into steps. These steps can be broken down to include: Agency Due Diligence, Third Party Assessment & Reporting, Remediation, and Verification of Compliance.

Agency Due Diligence

The review of in place policies & procedures are a good place to start. Look at your policies & procedures to ensure they match what is currently being done in your office. Management will need to work with their internal staff, and potentially their third party service providers, to ensure this is the case. If a firm is finding these two are not matching up, they must take steps to ensure what has been implemented in the operational environment enforces the established policies and procedures. If the current policies and/or procedures were written two years ago and your environment has changed, you may need to look at revising them to fit your current environment.

If you don’t have any policies and/or procedures in place, you will need to look at developing to meet your current work environment. There are a few routes you can take in order to implement a set of policies & procedures that meet your needs. You can either develop them internally from scratch or you can look to someone that has customized templates designed for the Title & Settlement industry, such as Real Estate Data Shield (REDS).

For those that may be looking at the requirements of ALTA Best Practices & GLBA for the first time, some things that need to be reviewed include, but are not limited to:

- Ensuring roles and responsibilities of all positions within the organization are clearly defined and there is a separation of accesses to sensitive information based on those individual roles.
- Implement a password policy, through both written & technical implementation, which requires all employees to use complex passwords of at least eight (8) characters that expire every 60 – 90 days, while remembering previous passwords to ensure they are not reused.
- Restrict the use of external media, such as USB drives, on user workstations.
- Deploy Anti-Virus software on all systems that cannot be disabled by users, are updated on a regular basis and have scheduled scans run.
- Encrypt data at rest on local systems and/or servers that host sensitive data, to include: NPPI, company proprietary information or any other information deemed sensitive.

An ever-changing environment, emphasizing a focus on security, in Title & Settlement has many in the industry wondering whether or not they can become compliant with the requirements laid out by ALTA Best Practice Pillar #3 and the Gramm-Leach-Bliley Act (GLBA). The simple answer is YES. However, it is going to take an organizational commitment to be successful in becoming compliant.

Matthew Froning
Chief Information Officer, Security Compliance Associates (SCA)
If not already done, employ a secure email solution to be used in the transmission of any sensitive information.

Install and configure a firewall and IDS/IPS to help protect the network from attacks and unauthorized access.

**Third Party Assessment & Reporting**

Once a firm has completed its internal due diligence and feel they are ready to have a third party conduct an assessment of your security process, look for a “partner” in this process that is going to work with you to ensure you either are compliant or will be available to you as the firm goes through the remediation steps required to become compliant.

During the assessment, the third party should be looking at your overall security posture, to include the technical, physical and administrative view of your firm. Each of these distinct areas plays a major role in the overall protection of not only the NPPI you are trying to protect, but also the protection of the firm’s other sensitive information as well.

The assessing organization should ensure the security measures put in place to protect the firm are being implemented properly, regularly updated and not being circumvented due to ineffective management & control of user privileges.

Once the assessment is complete, the individual who conducted the assessment should then compile all the findings in an assessment report. This report should provide you and your firm with detailed findings, along with recommendations on how to close any shortfalls found during the assessment. For example, if the firm lacked a Business Continuity/Disaster Recovery plan, the assessment report should explain the importance of a Business Continuity/Disaster Recovery plan and items that should be considered and implemented when developing the plan.

**Remediation**

This is your opportunity to remediate any gaps or shortfalls in your overall security posture. The company that conducts your assessment should have provided you a “roadmap” within the assessment report on the items that need attention in order to become compliant.

During this phase, you will also need to determine your ability to remediate items identified during the assessment. As an example, you may receive a recommendation to separate the public & private areas of the office space to ensure outside personnel do not have access to the non-public space. However, as an organization, you may determine the cost of separating these areas is too high and you have decided to put policies and/or procedures in place that require all outsider personnel show identification upon arrival, sign in and out on the visitor log and be escorted at all times during their visit to your office to ensure no accidental exposure of sensitive information.

Throughout, personnel assigned to complete the remediation of shortfalls should document changes made along the way. By doing this, it allows the firm to show interested parties they are taking appropriate measures to become compliant and protect data. It will also allow the firm to retrace steps if a remediation step has a negative impact on the environment, such as a critical piece of software no longer working after a patch is installed, and revert back to an older version that may still close the vulnerability but also provides for a more stable operational environment.

Finally, you should be able to rely on the company who conducted the assessment to consult with you throughout the remediation process.

**Verification of Compliance**

With the right “partner” in this process, the assessment firm will then review the remediation steps you have completed to ensure that you are now compliant with ALTA Best Practice Pillar #3 and GLBA. They should work with your designated representatives to go through all the remediation steps taken and verify security gaps or shortfalls have been remediated and that you now have processes in place to not only ensure your current compliance, but also lead to your continued compliance in the future.

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**About the Author**

**Matthew Froning** is the chief information officer of Security Compliance Associates (SCA) and a TS-SCI cleared Information Technology/Information Security specialist with extensive experience. In the U.S. Air Force, as both an active duty member and federal contractor, Matt led technical assessments, evaluations and integrations of multiple complex Network Warfare products, identifying shortfalls, gaps and capabilities critical to the Air Force’s network operation mission. A former commissioned USAF officer, Matt was a federal agent and the chief of Computer Investigations & Operations for the Air Force Office of Special Investigations, where he was responsible for investigating, managing and directing the investigation of computer related criminal, counterintelligence, counterespionage, fraud and undercover matters. After active duty, Matt was the regional manager, Cyber Operations Division, for ManTech International Corp., where he led the daily operations of a nearly $8 million government contract, while also conducting vulnerability assessments for several Fortune 500 corporations and providing critical information on vulnerabilities and solutions to ensure the integrity and security of their networks.
Crossword Puzzle

**Across**
5. Banking Insurance abbreviation?
6. Onus?
8. Underwriter?
10. Lien?

**Down**
1. What a HUD1 will be called in 2015?
2. What act created the CFPB?
3. Obligation?
4. Number of Alta’s “Best Practices”?
7. Number of days in a rescission period?
9. Government Agency?

*see solution online*
State legislators and attorneys general across the country became aware, for the first time in many years, about the public viewing and using the public land records during the mid-2000s. The land records have historically been public: available for anyone to see in the office of any recorder (clerk of circuit court in VA) at any time and without any explanation of why they wanted to see the document.

There was a national groundswell of computerizing land records indexes (think library card catalogue and the way to find the document) and creating document images during the 1990s. That movement generated the posting of land records indexes and images on publicly accessible Internet sites in the early 2000s. Recorders did so to better serve their title and lending customers, as well as the general public. Internet versions were available 24/7 and people did not have to travel, often inconveniently, to a courthouse during business hours.

Identity theft became a more frequent occurrence about the same time. Individuals expressed concerned about their personal privacy and raised alarms. The most often cited concern was that an individual’s social security number and bank account or credit card numbers were in plain view and could be stolen easily.

In response to requests for help and clarity from legislators, mortgage lenders, title underwriters and recorders, the Property Records Industry Association (PRIA) authored papers and model legislation to deal with the public land records and the expressed privacy concerns. These included an educational white paper titled Privacy and the Public Land Records in January 2006 http://www.pria.us/i4a/pages/index.cfm?pageid=3368 as well as model legislation in July 2006 called the SSNAPP Act (Social Security Number and Privacy Protection Act). http://www.pria.us/files/public/Committees/Records_Access/RA_Committee/SSNAPPModelAct0206.pdf. This act says, basically, that personally identifiable information – such as social security numbers and financial institution account numbers – should not be included on any documents that are going to become part of the publically accessible land records. Then PRIA issued a summary of state redaction laws in November 2009 http://www.pria.us/files/public/Committees/Records_Access/Records_Protection_Redaction/2009/StateRedactionLaws110609.pdf.

State laws were passed requiring recorders across the country to redact personally identifiable information. Recorders moved forward to comply without really knowing how it could be done, or at what cost. Quickly a definition and working principle of redaction moved to acceptance:

“Recorders receive documents and record them as received. Redaction is concealing private data in the public records from public view. Redaction is not permanently removing data from a recorded document.”


This paper distilled the countrywide experiences
of recorders and software vendors over the past decade into the “should and should not” principles and practices. The paper specifically addresses land records; it does not address court, vital or voting records. The best practices follow and additional information on the particulars and reasons are spelled out in more depth in the PRIA paper.

1. Legislators should consult their recorders, as well as PRIA and other like organizations, before creating or modifying laws that might adversely affect constructive notice requirements and the chain of title matters for real property.

2. Recorders should follow state-specific statutes. They should not under or over redact data elements beyond statutory authorization.

3. Allow full, open access to the redacted version of a document, while maintaining the un-redacted copy as the master/legal document. The redacted information does not negatively affect the constructive notice of the document. Security issues and potential pitfalls result from different rules for different users.

4. Do not redact property addresses as land records reflect who owns the property and who has an interest in it. Redacting property addresses can lead to chaos and imperfect constructive notice.

5. Do not redact the master/legal documents. Redact copies that will be publically accessible. This practice does not necessarily mean keeping two full complete sets of records. It can mean keeping two versions of a page within a document on which a redaction is required.

6. Do not redact signatures. Land records prove ownership and encumbrance. While nothing is perfect, copying signatures is tough, especially as we tend to sign on a line or over other letters and words.

7. Use automated redaction software to cover up data on digital images. Finding personally identifiable information is challenging and software outperforms humans many times over.

8. People involved with land records documents, from creation through signature through recording and archiving, should avoid marking on documents in such a way that will inhibit the effectiveness of optical-character recognition (OCR) software on that document.

9. People involved with land records documents should scan the documents to produce images at 300 dpi (dots per inch) and in a TIFF group 4 (tagged image file format)

10. Before purchasing an automated redaction software solution, conduct accuracy benchmarks and apply the same benchmarks throughout the time using the software solution.

11. Use automated redactions tools for digital images. It is difficult to read paper copies and often results in read-through or bleed-through to the other side of the page. Do not redact microfilm.

12. Create statistically correct sample document sets for your existing repository. Personally identifiable information in documents, practically speaking, appears in documents recorded from about 1970 to about 2005.

13. Chose an accuracy measure methodology and apply it across all benchmarks. You decide on accuracy tied to field, page, or document.

14. Ask many questions and evaluate risk, measurable outcomes, costs, education, storage component issues and considerations for policymaking.

We hope the Land Title community does not “mask over” this important issue and stands together to make records accessible, while preserving citizens’ private information. Adopting the principles set forth in the PRIA Redaction Best Practices paper will help sensible people deal with the issue.

ABOUT THE AUTHORS

STEVE MCDONALD is currently Director of Government Partner Programs for RedVision Systems, He served as Recorder of Deeds for Lancaster County, PA from 1998-2010 and was a founding board member of the Property Records Industry Association (PRIA). He co-chairs PRIA’s Records Access and Privacy Policy Committee with Carol Foglesong.

CAROL FOGLESONG oversees recording and records management for the Orange County FL Comptroller, a position she’s held for 25 years. She is a past president of the Property Records Industry Association (PRIA) and co-chairs PRIA’s Records Access and Privacy Policy Committee with Steve McDonald.
It’s Time to Talk Title — Owner’s Title

The Dodd-Frank Wall Street Reform and Consumer Protection Act created the Consumer Financial Protection Bureau (“CFPB”) and charged the CFPB to create and implement a regulation that integrates the mortgage loan disclosures under the Real Estate Settlement Procedures Act of 1974 and the Truth-in-Lending Act. They did. CFPB’s Integrated Mortgage Rule creates significant changes to the title and settlement industry. Among them is the new Closing Disclosure, which integrates the final Truth-in-Lending Statement and the HUD-1 Settlement Statement. While this new form has many noteworthy changes, our focus is on one change — the designation that owner’s title insurance is “optional.” The Closing Disclosure will be mandatory for all transactions for which a creditor or mortgage broker receives an application on or after August 1, 2015, extended to October 3, 2015.

Owner’s title insurance has always been optional in Virginia. However, that fact will be even more prominent to the consumer than it ever was before. The line item of owner’s title insurance will appear in a category entitled “Other” on the Closing Disclosure, along with items like an HOA processing fee and the home warranty. A draft of this Closing Disclosure must be given to the consumer at least 3 days before settlement, which is now termed as “consummation.” Delivery of the Closing Disclosure is ultimately the responsibility of the creditor, and Wells Fargo (which has by far the greatest market share) stated in September, 2014 that it will control the delivery of this document to the consumer. Many believe that other creditors will follow Wells Fargo’s approach as the market share leader.

Consider the effect of this new process if you were the consumer. Days before your settlement, the reality of the cost of what you are doing starts to sink in — your purchase is becoming more expensive than you estimated. There is furniture to buy, moving expenses, remodeling to be done — and then you get the draft Closing Disclosure from your creditor, which only confirms your fears about how expensive this transaction is going to be. After you have reviewed almost all of your expenses, down at the bottom of the sheet in the “Other” category, you read “Title — Owner’s Title Insurance (optional)” for $1,382.00, right after the HOA processing fee for $150. Since this document came from your creditor, there is no explanation as to what owner’s title insurance is or why you should get such a policy, so you make up your mind to decline it and save yourself the money. After all, it’s “optional,” like that “extra liability insurance” when you rent a car or that “traveler’s protection insurance” when you book a flight. So who needs it, right?

If the above scenario seems reasonable to you, then many consumers will walk into the settlement room predisposed to decline owner’s title insurance, and they will have had at least 3 days to become settled in that predisposition. If we who conduct closings do not become more skilled in persuading consumers of the value of owner’s title insurance, then fewer policies will be purchased and issued. Less money will be made by title agents and their underwriters. Consider also the long term effects. How often do you as a settlement agent depend on a letter of indemnity to make your transaction go on time? If fewer owner’s policies are purchased, that solution will become a thing of the past — you will have to actually clear the title, which takes time, perhaps taking you past the contractual settlement date. Think of the effect delayed settlements have on proceeds to sellers and commission checks to real estate agents.

If you want to avoid the kind of future I am describing, then it’s time to talk title — owner’s title. Knowing the various coverages and a few “horror stories” will not be enough — you need to know how to be a salesperson when it comes to selling an owner’s policy. The purpose of this article is to prepare you to do just that — to talk about owner’s title insurance in such a way that a consumer realizes its value and is
**persuaded** to buy it.

Nothing happens in this life without persuasion. You bought your car because you were persuaded by that Consumer’s Report analysis or commercial or price or salesperson. You were persuaded to get married because that prospective spouse somehow persuaded you that he or she was “the one.” Why, no one on this earth is even born without someone persuading someone else to... well, you know. Likewise, no one buys title insurance without being persuaded to do so.

Academically speaking, persuasion happens in 3 ways: *ethos, pathos* and *logos*. Believe me — I know, I majored in Rhetoric in college. *Ethos* is when you are persuaded because of the person who says it, like me who just said, “Believe me — I know, I majored in Rhetoric.” *Pathos* is when you are persuaded because of an emotional appeal. Many commercials fall into this category, appealing to your emotions — you will be so happy if you just buy our product. *Logos* is when you are persuaded because the appeal makes logical sense. Most of the approaches set forth below fall into the *logos* category, but thinking about how you can leverage all 3 categories will make you a better salesperson.

My overall approach can be summarized in three steps. First, when a consumer declines owner’s coverage, always respond positively. Second, ask questions to discover why the consumer has made this decision. Third, fashion a response to address the concerns and values of the consumer so that the consumer has no other choice but to buy. That’s persuasion.

The first and second steps are easy. When you are explaining the Closing Disclosure and you get to that line item for owner’s title insurance, be prepared for a consumer to say to you, “I don’t want that — take it off!” Don’t be defensive or make the consumer feel awkward. Say something like, “Of course — I’d be happy to do that for you. It seems like you’ve given this some thought already. May I ask you why you want to decline owner’s title insurance?” Or perhaps try, “That’s a great conversation to have — thanks for bringing it up. Title insurance is one of my favorite topics. Can I ask you why you don’t want title insurance?” This is very important — making the consumer feel comfortable and understood so that he or she is more receptive to seeing the value of purchasing an owner’s policy as you explain it in the moments that follow.

Once you’ve asked the question, listen to the answer. While there are many different reasons why one would decline owner’s title insurance, many fall in into one of four categories:

- Confused
- Economic
- Litigious
- Anything goes

Let’s look at each of these in turn and discuss the most **persuasive** response you can give for each.
**Confused**

The consumer who is confused generally says something like, “I don’t need an owner’s policy. It says right there that the lender is getting one, so another policy is not necessary.” Here, you first want to disabuse the consumer of this common misconception by saying something like the following:

That’s a great question — I get this question a lot. The lender’s policy only covers the lender, not you. And so if there is a title claim, the lender will be protected up to the value of the loan, but you will have no protection.

But don’t stop there. Here is where persuasion comes in. Since the consumer brought up the lender’s policy, leverage the consumer’s own rationale by saying something that fits the consumer’s mindset, like the following:

Since you brought up the lender, let’s just talk about the lender some more. The lender’s policy is not optional. Just think about that for a moment. The lender will not issue you a loan unless it is protected with a lender’s policy. I understand why you might not want an owner’s policy — you might buy a house only 3 or 4 times in your lifetime, so it is hard to see the value of title insurance. But the lender is in the business of issuing loans day after day. Lenders are well aware of the title issues that can occur and the need for title insurance. That is why they won’t issue you a loan without title insurance. If the lender wants that protection, wouldn’t you want that protection as well?

This response is very complimentary to the confused consumer’s objection, so it is good to pair these two together in the same conversation. It sounds very natural, not like some salesperson’s script.

**Economic**

When you ask a consumer why he or she does not want title insurance, the consumer who is economically motivated is easy to spot. That consumer says something like, “It’s just too expensive” or “That’s just too much money.” If that is the consumer’s response, then talking about the how the lender always gets a policy is irrelevant. Instead, for the economically motivated consumer, focus on an economically driven response, like the following:

I agree with you, Mr. Consumer — the cost of an owner’s policy can be a big bill. But since you raise the issue of cost, let me quickly run through 4 considerations regarding cost. And if you still don’t want it, then I’d be happy to take it off for you.

**Point Number One:** As far as insurance goes, title insurance is the cheapest to purchase because it is a one-time fee. All other forms of insurance like health or life or auto are purchased by a recurring charge, so over the years you end up paying far more for those forms of insurance. But with title insurance, once you pay, you’re done — and coverage lasts as long as you own the property; and with some policies, this coverage may extend even to your successors in interest — even after you have sold your home.7 You can’t say that about other forms of insurance.

**Point Number Two:** Someday, you may decide to refinance. Maybe rates will go down or your equity will increase and you may decide to put on an equity line. If that happens, the lender in that transaction will likely require you to purchase a new lender’s policy. And that could be another big bill. But if you have an owner’s policy, you may be entitled to a significant discount on the cost of that transaction.

**Point Number Three:** I understand that the cost of an owner’s policy seems expensive, but I also see that you have a significant down payment. That is what is at risk here. If you don’t get an owner’s policy and later experience a title problem, you may not be able to sell your house until you fix the problem at your own expense. All your equity may be held hostage until you do. In a worst case scenario, if a lawsuit is not successful, your equity could be lost.

**Point Number Four:** Fixing a title problem can be expensive. Sometimes it involves hiring an attorney and going to court. That amount that you see on the Closing Disclosure probably wouldn’t be enough to cover the first couple of hours of an attorney’s time. In contrast, if you have an owner’s policy and experience a title problem, just send a letter describing the issue to the address on the back of your policy. If your matter is covered and all applicable deductibles are met, your underwriter will take care of the rest.

Of course, you don’t have to run through all four, but all four meet the consumer where it matters most — the pocketbook. A fifth response is also appropriate here, but it depends on how the Consumer Disclosure reflects the fees for an owner’s policy vis-à-vis a lender’s policy. If the cost of a lender’s policy is shown at a modest simultaneous issue fee, then we all know that when the consumer declines an owner’s policy, the simultaneous issue fee no longer applies, and the consumer is charged full price for the Lender’s policy. The savings that the consumer thought was to be attained by declining the owner’s policy quickly evaporates. You may want to start with this point. It is perhaps the most difficult to relay to a consumer without giving the impression of “smoke and mirrors”, but once adequately understood it can be the most persuasive. For just a little more money, you can have an owner’s policy. You won’t save that much money by declining it.

**Litigious**

The consumer who is litigious decides that an owner’s policy is just not worth it because if something goes wrong, the consumer will just sue. Consider the following exchange:

**CONSUMER:** I came to you because you are an attorney and so I’m expecting that everything is done right. And so I think the relatively small risk of having a problem is very small and just not worth the cost of an owner’s policy.

**YOU:** Oh, thanks for the compliment. We really do strive for perfection with every settlement, and your transaction is no exception. We have taken pains to make sure that everything is
done right. But like you, we sometimes make mistakes.

CONSUMER: (interrupting) Well, if you do, you will make it right, right?

YOU: Of course! If I have made a mistake, I would certainly make it right at my own expense. But it is not that simple. There are many people outside of my control that can make a mistake, resulting in a title claim. For example, the person who searched the title and the person who created the survey could have made a mistake that will result in a title claim later on. Perhaps an easement was missed or the surveyor failed to recognize that your new swimming pool actually encroaches on your neighbor’s lot.

CONSUMER: Well, then I would expect they would make things right at their expense — and if they don’t, I’ll just sue. The law firm I work for is full of lawyers who would represent me, so cost is really not an issue.

Here, even when the consumer has overcome the hurdle of the cost of litigation, it is still very possible to demonstrate that litigation does not solve everything. If this is your consumer at the closing table, consider the following response:

YOU: Certainly, I would hope they would make things right at their expense if they made a mistake. But there is no guarantee that they would be available to fix things or be available to be sued by the time a title claim occurs.

CONSUMER: What do you mean?

YOU: Well, we have had the title searched in connection with your transaction. We do this to make sure the seller passes good title to you and to make sure that you execute the necessary documents to give the lender a lien to secure your loan. And that’s what happens with every sale or refinance transaction — the title is searched. And in the case of a sale transaction, a survey is performed if you wanted one.

Perhaps many years from now, you will refinance or sell the property. When that happens, a new title search and maybe a new survey will be performed. It may be at that time we will discover whether the people who did your title search or your survey in this transaction made a mistake.

If I made a mistake, I certainly hope that I’m around 10 years from now, but I can’t guarantee it. And I can’t guarantee that the title searcher or surveyor for your transaction will be around 10 years from now. And so when that title issue comes to light because someone — being human — made a mistake, that someone might not be around to sue.

And if no one is around to sue, you would be stuck fixing the problem at your own expense. You might have to move the deck that you built over that easement you didn’t know about. Or maybe you might have to pay your neighbor a lot of money because part of your swimming pool is on his

CONTINUED ON PAGE 34
A Cautionary Tale

This piece is based on a matter currently in litigation in state court. Though the matter is elementary factually, it has been anything but susceptible to an elementary solution. The litigation has been costly in terms of time and treasure and has focused my attention on one of the weaknesses inherent in the disposition of troubled loans and property which has unfortunately become a significant element in the conduct of commerce throughout the United States. It is something anyone who insures title to foreclosed property should consider.

In the business of insuring titles, we are used to some knotty issues which never seem to resolve, and eventually somewhere along the way, emerge from the weeds to take a hunk out of the hind parts of the unwary. We are going to focus on one of those issues, and in particular, why that issue can be the quicksand in an otherwise fairly ordinary swamp.

The explosion of mortgage defaults in the past number of years has had the effect of exposing an amazing array of storied title defects and issues. In the Commonwealth our foreclosure process is non-judicial and almost completely off-record. Typically, a search will reveal an instrument substituting a trustee followed by a trustee's deed. Underwriting procedures vary somewhat, but the thrust is to verify compliance with the Virginia Code.1 Additionally, underwriters are interested in evidence of due diligence.2 For the most part, the underwriting stops at that point unless the underwriter somehow becomes aware of untoward circumstances such as fraud or forgery.

Philosophically, our legislators have over the years deemed it a priority to avoid burdening our judicial system with foreclosures. The secured party derives its ability to enforce the deed of trust entirely from the instrument itself coupled with a straight forward minimal procedural recipe mandated by statute. There is no judicial filing, tracking or oversight anywhere along the way until the foreclosure is complete. At that point, the trustee, as a fiduciary, has the mandated task of filing with the commissioner of accounts for the jurisdiction, an accounting which is a straight forward documentation of the disposition of the funds derived from the sale. As a practical matter, there is great latitude in the timing of the accounting as well as the approval or disapproval of the accounting by the commissioner. Urban (or Rural, as it were) legend has it that in some localities, it is not unusual for an accounting to be forgotten entirely without any consequences.

Who is the commissioner of Accounts, and what is his/her function? Commissioners of accounts, as other commissioners, are creatures of the Circuit Courts. They are practicing attorneys appointed by the Chief Judge and serve as Officers of the Court, for compensation, to supervise the various fiduciaries that are under the jurisdiction of the Court, e.g. personal representatives qualified in probate matters and trustees serving under the great multitude of trusts generated in the planning of estates and management of wealth. The trustee(s) under each and every deed of trust that is foreclosed are under the supervision of the commissioner for the jurisdiction in which the foreclosure occurs. In counties such as Fairfax, Arlington and Virginia Beach, the Office of the Commissioner of Accounts has a significant payroll. In rural areas, commissioner’s duties occupy only a part of his/her practice.

An examination of the statutory regime for the appointment, powers and duties of the

1 Va. Code Sec. 59.1
2 50 USC App. §517, et seq. SCRA, reenactment of the Soldiers and Sailors Civil Relief Act.
commissioner of accounts reveals that commissioners exercise considerable power and authority under the umbrella of the Court. The commissioner’s role has become so significant that in recent years a manual for commissioners is in publication and wide use. With respect to foreclosures, the commissioner, in effect, is the sole official who exercises any scrutiny whatsoever of the foreclosure process. Most likely for that reason, some commissioners have extended their scrutiny of foreclosures beyond the accounting for funds, and also examine the entire process from the recordation of the deed of trust to the recordation of the trustee’s deed. These commissioners rationalize the extension of their mandate as an integral component of their supervisory power. The perceived scope of the power and authority of the commissioner of accounts as to such functions is not consistent and is often in hot debate throughout the Commonwealth. The legislature has not seen fit to address the issue.

Now, as to our particular matter, let’s talk about the qualifications for a trustee to serve under a deed of trust. The Commonwealth remains one of the more conservative states with respect to trustee qualifications, and the legislature likes trustees to have a local base and be susceptible to service of process within the Commonwealth. Individuals must be residents of Virginia. Corporations, limited liability companies or other entities must be organized under the laws of the Commonwealth or of the United States. I have polled title/settlement agents who handle transactions with recent foreclosures in the chain of title, and not one has indicated that there is any heed paid to the qualifications of corporate trustees. If that’s a sin, and I make no judgment, absolution is readily at hand in § 55-58.1(C) which provides for the conclusive presumption that a recorded deed of trust complies with § 55-58.1. Of course, one might expect that the loan servicer has vetted the substitute trustee as a part of the selection process, but I wouldn’t put too much stock in that expectation.

Now I ask how many foreclosures can the reader recall where the original designated trustee is the actor, and I will presume to answer for the reader in two words, “very few.” Through market forces and rapid evolution, the foreclosure industry is now served by numerous institutional substitute trustees, typically corporate or business entities, and often peddling their services nationally to large institutional loan servicers looking for low standard rates and one stop service. In the matter at hand, the foreclosure sale was held in January by a duly appointed corporate substitute trustee; the substitute trustee’s deed to the noteholder as successful bidder was recorded in February, and in conjunction with the subsequent REO sale, the noteholder’s deed to the insured owners and their purchase money deed of trust were recorded in March. The reader may wonder whether

4 Va. Code § 55-58.1. It is not clear whether a foreign entity domesticated in Virginia qualifies. This section was amended in the 2014 legislative session to eliminate the additional requirement that the entity maintain its principal office within the Commonwealth.

the title/settlement agent has any heartburn about the accounting which had not been filed. His comment to me was “I can’t wait for accountings. Contracts don’t contemplate accountings. Sales of REO properties would grind to a halt.” I suspect any reader who closes transactions involving a trustee’s sales or subsequent REO sales would have to agree with the title/settlement agent. It seems to be a fact of life in the fast lane.

The heartburn began later. In August the commissioner filed his report with the Court and in September recorded it in the land records. The only party to receive notice was the corporate trustee at its headquarters in Atlanta, Georgia. If that’s not enough of a clue, here’s the skinny. The substitute trustee was one of a number of subsidiary corporations of a holding company in Atlanta, Georgia. It was incorporated in Tennessee, and had only a mail drop in Virginia. The business of the holding company was national in scope, and the working premise was that the subsidiaries were formed to dovetail with the various state requirements. Apparently, no one read Va. Code § 55-58.1. It is not (yet) clear why the commissioner decided to make inquiry into the qualifications of the substitute trustee, but that he did. By that time the holding company had unraveled, and nothing constructive was done in response to the commissioner’s inquiries. The general counsel had bolted and is now with a law firm in the Midwest.

The commissioner opined in his report that the foreclosure sale was absolutely void as was the substitute trustee’s deed, and title to the property is vested in the foreclosed borrower. No one locally noticed the filing or recording of the commissioner’s report for several months until the real estate tax bills were missed. At that point the new owners discovered that the assessments had been shifted back to the foreclosed borrower as a result of the recorded commissioner’s report. The title/settlement agent was notified of the problem, located the report and then unfortunately lost several more months trying to fix the problem before sending it on to the insurer. The insurer appointed counsel for the owners and their purchase money lender, and counsel acquainted the loan servicer and the noteholder of the problem they created by appointing an unqualified substitute trustee.

This case is not entirely unique. A case with the same basic facts was resolved in another nearby county a couple of years ago. The distinction is that the commissioner in that case did not opine as to title but asked for the assistance of the Court. The owner and lender petitioned for ratification of the foreclosure, and the Court accommodated. Our Court would not entertain such a petition without having the foreclosed party as an adversary party. That turned into a donnybrook for a variety of predictable reasons. As cooperatively as possible, suit was then filed to quiet title on behalf of the insureds, and the foreclosing noteholder and the foreclosed borrower were named defendants. The noteholder worked in tandem with the plaintiffs throughout.

CONTINUED ON NEXT PAGE
The various issues are interesting, if not compelling, but most likely will not be resolved in the present case. They are worth our discussion, however, and the first thing we consider is the extent of the commissioner’s power and authority in examining a foreclosure. A reading of Va. Code § 64.2-1200, et seq. does not appear to authorize the commissioner to go beyond the accounting in his examination and report. At what point has the commissioner exceeded his power and authority? How much law do we have for reference? There are a number of Circuit Court cases around the state, and it’s pretty clear that the commissioners have some support for these extended examinations and opinions. However, these cases seem to be confined to the determination by the commissioner of statutory compliance problems in notice and advertising. Many commissioners will find and report similar matters to the Court without taking the extra step of clouding title by recording their report containing conclusions of law.

It was asserted in our case by the foreclosed party that the commissioner’s report has the force of a Court order, because no exceptions were taken within the 15 days prescribed by Va. Code § 64.2-1212. The insured owners and the trustee on the purchase money deed of trust, both hold title by instruments good on their face and of record prior to the recording of the commissioner’s report. Neither of the insureds had notice of the commissioner’s report, but in effect, the report divested the insureds of title. I would posit that under these circumstances, giving that report the dignity of a Court order would be to deprive the insureds of title without due process of law. This situation is distinct from the typical matter that is referred to a commissioner in chancery for evidence and recommendations to the Court. In that situation, even where a party misses the opportunity to file exceptions, the Court is not bound by the commissioner’s report.

To make the matter more interesting, the foreclosed party filed a warrant in unlawful detainer against the insured owners in General District Court after the Circuit Court case was filed. The unlawful detainer was opposed on two grounds: the GDC is without jurisdiction to try title to real property and unlawful detainer is barred on the expiration of 3 years. The Court ruled favorably on the statute of limitations without hearing the jurisdictional issue. At that time, counsel for the foreclosed party mentioned self help and suggested to the Court that the party would be within his rights to simply enter, break and change the locks. Shortly after that hearing, the party posted a letter on the front door of the property setting a deadline for the owner to vacate or be evicted via the lock changing procedure. The letter was immediately met with a successful emergency injunction.

The matter has not yet concluded though, by quitclaim, the foreclosed party has relinquished any right or claim to the property to the insured owners. The commissioner’s report stands of record unaddressed, but will be addressed with the Court this month.

What do we take away from this case? Mostly questions, I think. Is calling the commissioner of accounts office on your foreclosure checklist? I tend to regard the fact that the substitute trustee was unqualified as “off record”, but in light of an unfiled commissioner’s report, not in the traditional “risk” sense. Clearly, the due diligence with respect to the qualifications of the substitute trustee is the responsibility of the foreclosing noteholder. As an observation, the duty is most likely delegated to the loan servicer by contract which in most cases shouldn’t be the source of any great comfort. So, to what extent is the due diligence the concern of the title/settlement agent? If the underwriters have spoken, I have not heard, but this might be a question for your underwriting counsel. On the other hand, most of us are quite familiar with the substitute trustees we see every day. If we don’t recognize the substitute trustee, there is always Google, and, of course, the State Corporation Commission website.

In my mind, whether the commissioner has the power and authority to opine on record as to title is a non-starter. It should come as no surprise, however, that the Courts don’t seem too anxious to go there. After all, the commissioner is one of their own. Does (or should) the savings provision in Va. Code § 55-58.1(C) extend to the statutory provision for the substitution of trustees? I believe so. After all, what is so different about appointing a substitute trustee? Another thought, if an unqualified trustee performs all of the functions of a foreclosure perfectly, does it make any sense in terms of the legislative intent to scuttle the foreclosure with all of the attendant unknowns and mayhem which could follow? Final question, do judicial foreclosures offer a better solution?

I suggest we keep in mind that an unfiled commissioner’s report is a risk factor in insuring title. If the commissioner’s report takes issue with the accounting, it is probably not going to have any effect on title. However, should a commissioner take the same course as the commissioner in this case, you can bet that, at the least, there will be a claim in your column. The extent of a commissioner’s power remains an open question. The various circuits are not in agreement on these issues, and to date, no case has gone up on the issue of the power and authority of the commissioner in this context. Neither has the issue yet attracted the serious attention of the legislature.

The one matter remaining for comment is the action of the title/settlement agent upon learning of the problem. There are no circumstances that justify any delay in promptly notifying the insurer of a problem that has been brought to an agent’s attention. It is addressed in every agency contract. The delay in this case added a year or more of anxiety and uncertainty to the insured owners’ ordeal. The insurer has the policy liability but also the right to rely on the agent’s best effort to promote the insurer’s interest in servicing its claims. After all, in the end, claims service is what the policy holder bargained for.
**Title Tips & Trivia**

What You Don’t Know Could Scare You!

The Simple Dimple Subdivision Lot Search:

1. **How far back, how many years, should a title search cover for a lot in a dedicated subdivision? Should it be 24 months, 3 Owners, 5 years, Developer forward?** The Title Examiner should first check with the client to see what type of search and what time frame is needed, don’t Ass-U-Me. The Full title search should encompass 60 years back to a General Warranty Deed. The subdivision lot search is then based on this 60 year acreage search and a Subdivision File (Subfile) is created to include the Developer/Builder list(s). The Title Examiner can then conduct their search using this subfile information, checking the builder lists for their lot and then researching the subsequent owners forward to current. A Full Title is by custom in Virginia and based upon a 60 year search.

2. **Conveyance of the Common Areas to the Homeowners Association (HOA):** The written Dedication and Plat are recorded to establish the subdivision. In order to form the HOA, the Developer must establish and incorporate the HOA, filing the necessary paper work with the State Corporation Commission (SCC). In order to convey the Common Area(s) to the HOA, most jurisdictions in Virginia require that either conveyance language be contained within the recorded written Dedication or that a separate Deed to the HOA be recorded. The Common Areas are granted Tax Exempt status by the Commissioner of the Revenue only after conveyance to the HOA.

3. **Release from the master Deed of Trust for the lot being searched:** The master Deed of Trust(s) is recorded that encumbers the original acreage tract out of which the Lot is Dedicated. The Title Examiner must find the partial release for the Lot being searched or a full release of the Trust(s). If there is no release found of record, the Trust(s) are reported.

4. **What about the Dedicated Roads and Common Areas?** The master Deed of Trust(s) encumbers the original acreage parcel, which also includes the area within the Dedicated Roads and Common Areas. The Title Examiner must also find a release for these. If no release is found of record, the Trust(s) are reported. The Title Examiner should make a note on their title report if releases have not been recorded.

5. **Why is it important that the Dedicated Roads and Common Areas be Released? How does this apply to the Lot being searched in the Subdivision?**

Real Life Example:

Master First and Second Deeds of Trust were recorded by the Developer encumbering the entire original acreage tract. The Developer recorded the Dedication and Plat for the Subdivision creating the Lots and the Private Roads and Common Areas. The Developer proceeded to construct and put in the curbs, gutters and paved the Roads. The Developer sold some of the Lots in the subdivision to individual home owners, no access stated in the Deeds. Developer did not convey the Private Roads or Common Areas to the Homeowner Association. The Developer defaulted on the first Trust and the Bank foreclosed on the remaining property encumbered by the First Trust.

Some Resulting Title problems:

- Are the Lots land-locked? **Possible lack of access for the Lots.**
- HOA was not established or Incorporated. **Is there an HOA?**
- Private Roads and Common Areas are not Tax Exempt — Delinquent Taxes are accruing. **Who will pay these Taxes?**

“To know that we know what we know, and that we do not know what we do not know, that is true knowledge.”

Henry David Thoreau
**Questions & Answers**
*for Title Examiners and Underwriters*

**Kids, Don’t Try This At Home!!**

*“Moreover, an abstractor should not be compelled to make a hurried search.”*¹

Dear Readers:

Tute derives no small amount of comfort from employment and the resources available by reason of that employment. While waiting for underwriting counsel to wake up from an “après dejeuner” snooze, I was amusing myself reading a professional publication lying on the shelf. The title “From the Cluttered Desk (and Mind) of the Editor” suggested counsel had a kindred spirit elsewhere within the bar. All kidding aside, in the following soliloquy, Tute is merely the eyes, feet and hands of counsel (Archie to his Nero, or for those with less literary inclinations, Pancho to his Cisco, Sanger to his Ironside, surely the trope continues to appear in modern media).

“Whatcha got?” emanates from beneath the still closed eyes, but the breathing rhythm has changed, so I have to presume counsel is arising from the Elysium depths.

“We’re working on title to a block in an older part of the city. As you work your way north along the street, there seem to be two small alleys that just disappear.”

“What’s the dollar value on your transaction?”

“It’s still ‘to be determined’ but the tax assessment is around $660,000 for both parcels. No improvements on one; about $100,000 on the other; so we’re probably looking at $750,000 to a million.”

**“Who created the alley? Alleys? When? How?”**

Do we really care? These lots have been in common ownership since the 1950s. There is even a title policy.

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“**And the face amount on the policy?”**

“$7,500 on one and $10,000 on the other.”

“Tute, while I’m not sure every examiner would merrily blow past the 60-year rule the way you do; now that you have, we need to know a little bit more before we start resting on defenses or pointing fingers at our distinguished predecessors in office. (Expletive deleted), just hiring a flyspeck swatter, I mean a lawyer, to tell us we have a problem will cost more than the premium we’ll ever earn. Get thee back to the land records. What else can you tell me?”

Several million electrons, and about 3 ounces of dust later, I return. “Are you awake?”

“And the face amount on the policy?”

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“**Lemme see. Nice, they recorded a plat with the deed. Yep, 19 feet by survey, parenthetical says 15 feet by deed. Note over on the side stating reliance upon the lines of occupation. Another note about party wall**


agreements. Wasn’t that first set of alleys just north of this lot?”

“Yesss… and no. This is the southern alley, or might be…”

“Have you found those party wall agreements? I was thinking about the way they described the alley as ‘covered.’ For most party walls, the party seeking the agreement is trying to use an existing wall. Maybe those will shed some light on which wall was built first.”

More electrons, more dust.

I walk in saying “Party wall agreements don’t help, they are with adjoining owners to the north and south,” before I notice a phone tucked into the side of a head, which was staring at a ruler propped up against an aerial photo on the monitor and saying “Let’s see, 100’ = 7 notches… so, this parcel is about… 100… 200… 300… three hundred something feet deep.” Beating a hasty retreat, I return to my cubicle to review a construction loan update.

A head pops into my cube, followed by the rest of our underwriting counsel. “You were saying the party wall agreements don’t help?” What do they tell us that might be helpful? I hand over the agreements while printing off a notice of mechanic’s lien. “Hmm, this one is dated 1856 and this other one is 1859. You’re right, though, these aren’t the covered alleys’ walls, they’re on the other side of the buildings. At least now we know when those two buildings were built… sometime after 1856. When were these alleys first mentioned?”

“Special commissioner deeds from an estate partition… 1877, 1878, 1885. Oh, and I found a plat with one of the special commissioner deeds that shows all four lots and both alleys.”

“Great, that narrows it down. The buildings were probably built, and the alleys covered, between 1856 and 1877. No third party beneficiaries, the alleys only reach the internal portion of the lots, behind the buildings. No apparent dedication to the public. What we have here appears to be comparable to joint driveways. Common law rules suggest the boundaries would have been the center of the alley, and the alleys’ exterior dimensions are shown solely for the purpose of delineating the areas of travel. You said last time that all four lots were in common ownership?”

“Since the ’50s.”

So, we have a merger of fee and easement in the 1950s and the buildings themselves were demolished and partially replaced in…?”

“In the ’70s.”

“… so the necessity for the easements is also gone. No third parties, no further necessity, merger of interests, and you have prior policies. I wish we didn’t have to re-invent the wheel when we try to figure out why old policies didn’t mention something in the land records, but I guess it’s all for the better. If we said why we thought the exception could be deleted, we might get sued for picking the wrong reason. Gee whiz, this not being a lawyer is hard work, I think it is time for a nap.”

And he disappeared back into his cave. Oh, well, Spring will be here soon.

Tute

Celebrating 25 Years of Service to VLTA Members and the Title Industry!

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Did you know that Virginia Land Title Association has over 3,000 LinkedIn connections, 354 Twitter followers, and 447 Facebook fans? Our social media presence helps us reach out in real time. Join us online for updates, inside information, and more!

This year’s most shared and liked posts?

#VLTAExaminer “Nothing Easy about Ensuring Easements” by Skip Sacks
#SundayTrivia “What is the term for gradual accumulation of soil along a waterway?”

First American Title has been at the forefront of providing peace of mind, valuable protection and accurate information to our agents and their customers.
Title Insurance Licensing

Virginia Land Title Association is excited to announce that our Title Insurance Pre-Licensing course will be launched as an online course beginning in September. Available in eight 2-hour modules, the course will cover the Exam Content Outline approved by the Virginia Bureau of Insurance (BOI) and will help to prepare students for the Virginia Title Insurance Licensing Examination.

Our final face-to-face class in 2015 will be held in Northern Virginia on July 17-18. Register online at www.vlta.org/title-insurance-licensing.

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We’re pleased to announce that the VCTE Online Course will reopen for registration in August with new, updated, and streamlined content. Stay tuned for more information, and register online at www.vltace.com.

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The Virginia Certified Title Settlement Agent course is currently on hiatus. We are working to bring our full suite of professional development courses to you online by 2016.

Certification Continuing Education

The purpose of Certification Continuing Education (CCE) is to ensure that certification holders represent the most up-to-date experts in their chosen professional field. VLTA will continue to offer current and relevant education to assist certification holders in meeting this requirement. All CCE courses are vetted by VLTA’s education committee for their relevance, quality, and rigor.

In each biennium, students are required to complete continuing education to maintain certification status. The first biennium period has been extended to allow all students a fair chance to complete the CCE requirements. The original biennium was to end on December 31, 2015, but has been extended to December 31, 2016.

Upcoming courses:

<table>
<thead>
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<th>Date</th>
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<tr>
<td>Saturday, August 8</td>
<td>Fair Oaks, Virginia</td>
<td>VCTE Continuing Education</td>
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<tr>
<td>Friday, October 2</td>
<td>Richmond, Virginia</td>
<td>Fall Seminar (VCTE &amp; VCTSA included)</td>
<td>Registration</td>
<td>August 1st</td>
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property. You wouldn’t have to do that with an owner’s policy — things like that could be covered.

CONSUMER: I see your point…

YOU: As you and I both know, litigation does not solve every problem. By the time a title problem comes to light, the responsible party can be dead or out of business. Sometimes, title claims do come to light earlier and the responsible party is available to be sued — but litigation is still not a viable option.

CONSUMER: What do you mean?

YOU: Well, consider your sellers, Mr. and Mrs. Thompson. How do you know that they are the real Mr. and Mrs. Thompson on title? Certainly, just like I asked for your ID, my counterpart conducting the seller’s side is asking for their IDs.

But IDs can be forged. And just because Mr. and Mrs. Thompson look nice doesn’t mean they aren’t crooks. If crooks looked like crooks, they wouldn’t be able to get away with half the stuff they get away with! I can’t tell you how many title claims I have heard about where the “wife” signing the deed at settlement is really the husband’s girlfriend and the real wife is off on business somewhere, only to come back to a home occupied by the new purchaser.

If something like that happens to you, that deed signed by the fraudsters is void — you own nothing. Who are you going to sue? Those fraudsters will be long gone, living by some new name somewhere, unable to be located.

CONSUMER: Oh!

YOU: And sometimes, there is nobody to sue because a title claim occurs and nobody did anything wrong during your transaction. Picture this. We have your title searched. You sign documents and the seller signs documents. We then take those documents to the land records to record them. Before we do, we do what is called a “title bring down” — we look at the title again to make sure that nothing has changed. And if it hasn’t, we record.

But land records are not instantaneous. When our title examiner gets in line to record, there is always the possibility that some judgment creditor of the seller or some other party could be ahead in the line, recording a judgment or some other lien against the seller. Perhaps such a judgment or lien against the seller is already recorded, but evidence of the recording is in the scanning department and not yet available for the title examiner to review. If that happens, that lien against the seller will have superiority over your interest in the property.

A title insurance policy protects you against this, but without it, you would be forced to get the seller to fix this problem. But again, the seller might not have the desire or resources to fix the problem, or this problem might not surface for many years, and by that time, the seller could be dead otherwise difficult to find. Once again, litigation may not be the best answer. Your best answer in that scenario would be an owner’s policy of title insurance.

In sum, the litigious consumer says, “I don’t need title insurance because you will pay if something goes wrong, and if you won’t, I’ll just sue you.” And so all your responses must be calculated to rebut that presumption. Sometimes, by the time a claim surfaces, the responsible party is not around to fix things or be sued. Other times, the responsible party is judgment proof. And the very system of recording allows for title claims to occur. In all these scenarios, litigation is not an adequate remedy, even if you can afford it. The only available remedy is a title insurance policy.

Compare ALTA Owners Policy of Title Insurance 6/17/06, Covered Risks Nos. 1, 2(a)(ii), 2(a)(iii) and 2(a)(iii); ALTA Homeowner’s Policy of Title Insurance 12/02/13, Covered Risks Nos. 1, 3, 6(a), 6(b), 6(c), 10.
ALTA’s Best Practices Pillar #2 states:
Adopt and maintain appropriate written procedures and controls for escrow trust accounts, allowing for electronic verification of reconciliation.

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Sound too good to be true?
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A sampling of Member Discount participants are below. For more information, please email us directly. If you are a Member, simply click on the logo below to be redirected to the Member Discount offer. (Member login required.) Learn more about this month’s featured partner at www.vlta.org/member-discounts

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