

THE DAILY RECORD

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TitleTRACK

ALTA establishes set of best practices

Just one year ago, there was turmoil in the real estate settlement services arena with regard to the possibility of bank service providers having to be “vetted” in order to continue providing services to their bank customers. The most affected industry was and continues to be the title industry, but other service providers are affected as well.

At least one vetting company made headlines and some headway in convincing lenders that their process of investigating service providers was the wave of the future. A lot has changed in one year — although the Consumer Financial Protection Bureau has not made any changes in its directives to banks, there are changes to what banks may require of their service providers.

The newest and possibly the most likely solution and alternative to vetting of title and settlement companies comes from the American Land Title Association as a result of discussions with the largest title underwriters and the largest mortgage banking entities. The result is a set of seven best practices together with assessment procedures and a certification package. The entire framework was developed to assist lenders in meeting their obligation to oversee their settlement services vendors. It is also intended to guide title and settlement agencies on best practices to protect consumers, promote quality service, provide for ongoing employee training, and meet legal and market requirements.

Because a full discussion of the Best Practices can be lengthy, what follows is summary along with abbreviated commentary on procedures to comply:

1. Establish and maintain current license(s) as required to conduct the business of title insurance and settlement services.

2. Adopt and maintain appropriate written procedures and controls for escrow trust accounts allowing for electronic verification of reconciliation.

Maintain separate escrow and operating accounts; monthly three-way reconciliation; daily reconciliation of receipts and disbursements; document outstanding balances; segregation of duties; set appropriate authorization levels; use of positive pay or reverse positive pay; automated clearing house blocks; international wire blocks; ongoing training.

3. Adopt and maintain a written privacy and information security program to protect non-public personal information as

required by local, state and federal law.

Establish physical security protocols; control use of removable media; use of secure online delivery methods; establish network security protocols; establish procedures for disposal of non-public personal information; establish disaster management plan; ongoing training; establish audit procedures to ensure compliance; procedures for security breach notifications.

4. Adopt standard real estate procedures and policies that help ensure compliance with federal and state consumer financial laws as applicable to the settlement process.

Establish document recording procedures; establish procedures for charging of proper title premiums and other settlement related fees.

5. Adopt and maintain written procedures related to title policy production, delivery, reporting and premium remittance.

Establish procedures for timely production of final title policies and delivery to customers; establish procedures for timely remittance of premiums and policies to underwriters.

6. Maintain appropriate professional liability insurance and fidelity coverage.

Maintain appropriate errors and omissions insurance, professional liability insurance, fidelity coverage and surety bond coverage.

7. Adopt and maintain written procedures for resolving consumer complaints.

Establish procedures for intake, documentation and tracking of complaints.

In addition to the above, ALTA has also developed assessment procedures and a certification package. The Assessment procedures were developed as a framework to guide a third party, such as a Certified Public Accountant, in conducting a review of a service provider's compliance with the best practices outlined above. These procedures, which can be found on ALTA's website, can also be used initially by service providers in documenting their compliance with the Best Practices, and as a test of their procedures to prepare for an actual assessment or audit.

Once the service provider has passed the assessment/audit, they would receive a certificate indicating their successful compliance. It is important to note that the certificate is issued to the

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service provider and not the lender. The certificate then becomes a part of the certification package that would be provided to the lender.

The Certification Package consists of 3 parts: the service providers own correspondence letter to its lender customer; a copy of the certificate referenced above and a copy of their E & O Declarations page. The service provider's own letter is a request that the information provided be considered as implementation of and in compliance with the Best Practices.

There are numerous seminars, some even full day seminars, on this very topic that are presented by various organizations

(ALTA, state land title associations and various title underwriters, to name a few). I suggest attending one of these events. ALTA's Best Practices may not necessarily be the only way to comply with a lender's requirements. Each lender has to decide what it will accept from its service providers in order to comply with CFPB's directive.

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