Third-Party Vetting: The New Reality in Residential Practice

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Webster's Third New International Dictionary (1981) defines "vet" as "to inspect or examine with careful thoroughness and especially in the quality of an expert".

North Carolina real estate attorneys have always believed that we are among the best and most thoroughly vetted settlement agents in the country. Our law licenses serve as evidence of our professional competence. The North Carolina State Bar's random audit program and client security fund protect our clients from misappropriation. The title insurance companies verify our credentials as real estate practitioners prior to including us on their lists of "approved attorneys". We maintain malpractice coverage. The title companies stand behind us with coverage under their insured closing letters. And, we have all literally sworn a solemn oath in open court to put our clients' interests above all others. All things considered, it would seem that North Carolina's approved attorney system provides a thorough system of checks and balances to protect the consumer.

Times have changed, and a New Reality is taking shape in the residential real estate practice. In this New Reality, the protections of the North Carolina approved attorney system will not suffice for the lenders or their regulators. Hundreds of millions of dollars are routed through our trust accounts as we handle our clients' transactions, and the system is simply going to demand more accountability.

The Consumer Financial Protection Bureau ("CFPB") was created by the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank"). Dodd Frank was signed into law July 21, 2010, and the CFPB opened for operations in July, 2011. In its short life span, it has become one of the most powerful agencies in the federal government. It possesses substantial enforcement authority. By way of example, it has initiated enforcement actions resulting in penalties to American Express for $85,000,000.00, against Discover for $200,000,000.00, and against Capital One for $210,000,000.00 in connection with their credit card operations. There is every reason to believe that

the CFPB can and will be equally forceful in the realm of residential real estate transactions.

There are additional liability pressures on the lenders aside from the CFPB. The "foreclosure-gate" or "robo-signing" scandal arose when lenders failed to adequately supervise third-party providers who failed to exercise minimal care or committed outright fraud in the processing of foreclosures. The result was massive litigation, large financial penalties, and a court-mandated commitment to exert some supervision over third-party service providers.

The CFPB applied a spark to the kindling in April, 2012, with its “Bulletin 2012-03”. See Attachment A. The bulletin informed its supervised lenders that the CFPB expects the lenders to effectively manage the risks of service provider relationships. The message to the regulated lenders is clear: Lenders are and shall be held responsible and liable for acts of third-party service providers that harm consumers. Penalties will be severe.

Recognizing an entrepreneurial opportunity, several for-profit vendors emerged in late 2012 to present an aggressive sales pitch to lenders: "We will perform your due diligence for you by creating our own independent registry of approved settlement agents. We will require criminal background checks of all employees and access to trust accounts, and whatever else we deem important. We will provide you, the lender, with a list of the settlement agents whom we have ‘vetted’, and you will be safe to allow these firms to close your customers' transactions. And don’t worry about the cost because we expect that these settlement agents will be lined up at our door to purchase our seal of approval." Many NC closing attorneys received emails or letters attempting to persuade or coerce us into paying the fees and sacrificing our professional independence for the privilege of joining one or more of these networks. Although a few decided to participate, it appears that the vast majority of attorneys simply refused.

The national backlash against these vetting companies was significant, and it stemmed the tide temporarily. Settlement agents and closing attorneys across the country refused to participate, and the lenders decided to back off for the time being.

North Carolina's real estate bar was vigorous in its response. The North Carolina State Bar, the Real Property Section of the N.C. Bar Association, and The Real Estate Lawyers Association of North Carolina all sent letters to the CFPB imploring it to steer the ship in a different direction. See Attachments B-D. The letters sought to educate the CFPB on the value of the existing NC approved attorney system and to explain that this proposed system of independent vetting companies would severely limit consumer choice of legal representation in the largest and most significant transactions in most clients' lives. This system would limit the number of attorneys willing or able to join these networks. Instead of protecting the consumer, the unintended consequences would be higher prices and diminished choice of representation.

Despite the well-reasoned responses of our real estate bar and our brethren around the country, the CFPB has not backed off the concept of lender responsibility for third-party providers. Nor has it moved in any way to exempt attorneys from that vetting.

And so we come to the New Reality. Lenders will demand greater accountability from the firms who close their loans. Period. They have no reasonable alternative. This will not change.

So, what now? Many around the country have concluded that if vetting is our New Reality, then let's get it right. Let's create legitimate standards for closing attorneys and settlement agents. Rather than sacrificing independence and submitting to the irrational and intrusive demands of dubious "vetting companies", the settlement industry can create valid standards of practice that truly protect lenders and consumers. The idea is that title professionals can create a better and more effective vetting mechanism than those proposed by the third-party vetting entities.

The American Land Title Association (ALTA) represents title companies and title agents nationwide, and it has been on the forefront of this movement. ALTA has produced a new paradigm known as "Best Practices". The Best Practices have been studied over a period of months and have been reviewed with various lenders. Many of these practices are already in place at reputable firms. However, there are new protocols and requirements that many of us have not traditionally followed. For more information on the ALTA Best Practices, see Attachments E and F or visit www.alta.org/bestpractices.

In North Carolina, a task force of practitioners and title company representatives has begun meeting to consider development of a North Carolina version of Best Practices which would take into account our unique status as licensed attorneys rather than mere settlement agents. It is anticipated that the ALTA Best Practices could be used as a template for the North Carolina Best Practices. The end result would be that if the closing attorney, or his or her firm, complies with the program of Best Practices, then this status will be sufficient to satisfy the lenders that the firm has been adequately vetted and is a safe risk for closing any given transaction. This is a work in process, and many details are still under consideration.

The New Reality is coming. The residential practice is changing, and you can be assured that this is more than a passing trend. We are part of heavily-regulated national marketplace, and we will have no choice but to modify the way we do business. If you intend to represent clients in residential real estate transactions, you will have to comply with some new standards. And, even if your practice is strictly commercial, you need to be awake--it is reasonable to expect similar changes in that arena as well. So, educate yourself. The train is moving. Climb aboard or be left behind.

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Attachment A

Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

CFPB Bulletin 2012-03

Date: April 12, 2012

Subject: Service Providers

The Consumer Financial Protection Bureau ("CFPB") expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm. The CFPB's exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.

This Bulletin uses the following terms:

Supervised banks and nonbanks refers to the following entities supervised by the CFPB:

- Large insured depository institutions, large insured credit unions, and their affiliates (12 U.S.C. § 5515); and
- Certain non-depository consumer financial services companies (12 U.S.C. § 5514).

Supervised service providers refers to the following entities supervised by the CFPB:

- Service providers to supervised banks and nonbanks (12 U.S.C. §§ 5515, 5514); and
- Service providers to a substantial number of small insured depository institutions or small insured credit unions (12 U.S.C. § 5516).

Service provider is generally defined in section 1002(26) of the Dodd-Frank Act as "any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service." (12 U.S.C. § 5481(26)). A service provider may or may not be affiliated with the person to which it provides services.

Federal consumer financial law is defined in section 1002(14) of the Dodd-Frank Act (12 U.S.C. § 5481(14)).

A. Service Provider Relationships

The CFPB recognizes that the use of service providers is often an appropriate business decision for supervised banks and nonbanks. Supervised banks and nonbanks may outsource certain functions to service providers due to resource constraints, use service providers to develop and market additional products or services, or rely on expertise from service providers that would not otherwise be available without significant investment.

However, the mere fact that a supervised bank or nonbank enters into a business relationship with a service provider does not absolve the supervised bank or nonbank of responsibility for complying with Federal consumer financial law to avoid consumer harm. A service provider that is unfamiliar with the legal requirements applicable to the products or services being offered, or that does not make efforts to implement those requirements carefully and effectively, or that exhibits weak internal controls, can harm consumers and create potential liabilities for both the service provider and the entity with which it has a business relationship. Depending on the circumstances, legal responsibility may lie with the supervised bank or nonbank as well as with the supervised service provider.

B. The CFPB's Supervisory Authority Over Service Providers

Title X authorizes the CFPB to examine and obtain reports from supervised banks and nonbanks for compliance with Federal consumer financial law and for other related purposes and also to exercise its enforcement authority when violations of the law are identified. Title X also grants the CFPB supervisory and enforcement authority over supervised service providers, which includes the authority to examine the operations of service providers on site.[1] The CFPB will exercise the full extent of its supervision authority over supervised service providers, including its authority to examine for compliance with Title X's prohibition on unfair, deceptive, or abusive acts or practices. The CFPB will also exercise its enforcement authority against supervised service providers as appropriate.[2]

C. The CFPB's Expectations

The CFPB expects supervised banks and nonbanks to have an effective process for managing the risks of service provider relationships. The CFPB will apply these expectations consistently, regardless of whether it is a supervised bank or nonbank that has the relationship with a service provider.

To limit the potential for statutory or regulatory violations and related consumer harm, supervised banks and nonbanks should take steps to ensure that their business arrangements with service providers do not present unwarranted risks to consumers. These steps should include, but are not limited to:

- Conducting thorough due diligence to verify that the service provider understands and is capable of complying with Federal consumer financial law;

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[1] *See, e.g.*, subsections 1024(e), 1025(d), and 1026(e), and sections 1053 and 1054 of the Dodd-Frank Act, 12 U.S.C. §§ 5514(e), 5515(d), 5516(e), 5563, and 5564.

[2] *See* 12 U.S.C. §§ 5531(a), 5536.

- Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
- Including in the contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices;
- Establishing internal controls and on-going monitoring to determine whether the service provider is complying with Federal consumer financial law; and
- Taking prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

For more information pertaining to the responsibilities of a supervised bank or nonbank that has business arrangements with service providers, please review the CFPB's *Supervision and Examination Manual: Compliance Management Review* and *Unfair, Deceptive, and Abusive Acts or Practices.*[3]

[3] http://www.consumerfinance.gov/wp-content/themes/cfpb_theme/images/supervision_examination_manual_11211.pdf at 32 (CMR 1), 37 (CMR 6), 44 (UDAAP 1), and 59 (UDAAP 6).

Attachment B

NORTH CAROLINA
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

Consumer Financial Protection Bureau
Attn: Mr. Richard Cordray
Director of the Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552

Re: Consumer Protection in North Carolina Real Estate Transactions

Dear Mr. Cordray:

The members of the North Carolina Bar Association have asked the Real Property Section of the North Carolina Bar Association to step forward and advocate for the protection of our clients in the State of North Carolina. We firmly believe that, in the State of North Carolina, our goals are unified with those of the CFPB, as "consumer protection" is synonymous with "client protection." We write to express our concern that a misinterpretation of CFPB policy threatens the North Carolina real estate consumer.

As a group of professionals dedicated to the protection of our clients, we consider ourselves the first line of defense for consumers in real estate transactions. One of the indelible lessons of the past decade in the housing market is that the consumer needs an advocate, protector, and counselor at the closing table. The unfortunate fact is that the consumer must frequently be protected from predatory lenders and brokers. In North Carolina, the real estate attorney stands between the consumer and the real estate agent, between the consumer and the mortgage broker, between the consumer and the bank, between the consumer and the title insurance companies, between the consumer and the other parties to the transaction, and between the consumer and his or her own shortcomings. The attorney is the only party with a sworn obligation to serve only the client. Of all of the parties (and third parties) involved directly or indirectly in a real estate transaction, the attorney is the only one who must always place the interests of the consumer above his or her self-interest.

We write to discuss the potential for de facto regulation of attorneys in the North Carolina State Bar by the regulated banks, which is an unintended result of the actions of the CFPB. The CFPB's April 13, 2012

Memorandum ("April Memo") suggested to regulated banks that they would be potentially liable for the actions of their third-party service providers. While this guidance is within the purview of the CFPB, the question of exactly who is a third-party service provider begs to be more clearly answered. As a result of the April Memo, a cottage industry of "vetting companies" has emerged with a business plan based upon persuading regulated banks that the April Memo requires them to apply additional controls and regulations on attorneys who represent consumers (clients) in North Carolina real estate transactions.

Based upon this misinterpretation of the April Memo, certain banks have required that attorneys submit to third-party background investigation by unregulated, for-profit entities rather than rely on the existing licensing authority, disciplinary authority and regulatory authority of the North Carolina State Bar. While we support protections for consumers at the closing table, we believe that it is imprudent to supersede the constitutional and time-honored authority of each state to regulate and discipline its own attorneys by allowing a financial institution in another state to be judge and jury as to which attorneys may be selected for legal representation by a consumer. This could, and in our opinion will, effectively limit consumer choice to attorneys who are cherry-picked by the banks and who will be inclined to offer less-than-optimal advocacy against the banks on behalf of the consumer.

This results in an indirect delegation of regulatory authority by the CFPB over North Carolina attorneys, which the CFPB does not possess based on Dodd-Frank's provisions. Such authority is constitutionally and statutorily delegated to the North Carolina State Bar by the 10th Amendment and well-recognized Supreme Court precedent and interpretation. Further, the North Carolina constitution, statutes and administrative regulations set forth the exclusive controls over the attorney-client relationship and the practice of law in North Carolina. Both federal and state law recognize that it is not only the exclusive province for the North Carolina State Bar to regulate and discipline attorneys in this State, but it is the State Bar's statutory duty in accordance with the provisions of Chapter 84 of the North Carolina General Statutes.

The Dodd-Frank Act includes a broad practice-of-law exclusion, specifically stating that the CFPB does not have supervisory or enforcement authority over attorneys that are engaged in the practice of law and in an attorney-client relationship with their consumer clients.

SEC. 1027. **LIMITATIONS ON AUTHORITIES OF THE BUREAU; PRESERVATION OF AUTHORITIES**.

(e) **EXCLUSION FOR PRACTICE OF LAW**.—

(1) IN GENERAL.—Except as provided under paragraph (2), the **Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law**.

(2) RULE OF CONSTRUCTION.—Paragraph (1) **shall not be construed so as to limit the exercise by the Bureau of any supervisory, enforcement, or other authority regarding the offering or provision of a consumer financial product or service** described in any subparagraph of section 1002(5)—

(A) **that is not offered or provided as part of, or incidental to, the practice of law**, occurring exclusively **within the scope of the attorney-client relationship**; or

(B) that is otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service.

(3) EXISTING AUTHORITY.—Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

For a fuller explanation of the North Carolina definition of the practice of law in connection with a real estate closing, we are enclosing the previously submitted letter of the North Carolina Bar Association (the "Association Letter"). In addition, the North Carolina State Bar has addressed this very issue to you in a letter under separate cover (the "Bar Letter"). A copy of that letter is enclosed herewith for your convenience and reference. We endorse the comments of our State Bar in the Bar Letter and in its advisory opinions.

The vetting companies' misinterpretation of the April Memo, combined with some market participants' apparent willingness to disregard both federal and North Carolina law, has created an impression by some regulated lenders that they now must regulate and oversee attorneys engaged in the practice of law when representing consumers in real estate transactions. A letter or clarifying memorandum by the CFPB stating that such is not the intent or effect of the April Memo, or any other provision of the Dodd-Frank Act, could certainly put this issue to rest and relieve the regulated lenders of this mistakenly perceived responsibility.

It is well-recognized that a consumer's attorney is necessary to protect that consumer's interests in defense of a foreclosure proceeding; the same is also true at the material stages of a real estate transaction when the consumer is acquiring title to real property. The legacy of the economic crisis which led to the creation of the CFPB should not be that attorneys are removed from their crucial role in protecting consumers from the numerous market participants involved in any real estate transaction. To do so leads to the absurd and unintended result that parties other than the consumer (i.e., the opposing team in the transaction) put themselves in the position to act as referee as to who can and cannot participate as the advocate on behalf of the consumer. (As a side

bar, in states where gambling is legal, even the gamblers acknowledge that this is not fair to the unsuspecting better; the referee exists to stop the fight when necessary, call the fouls or at the very least, make sure that the rules are followed.)

Finally, we cannot end our letter to you without acknowledging potential critics. Some in the banking industry might suggest that attorneys are simply trying to protect their profession – that this is a protectionist position. While it must be acknowledged that there is a financial benefit to North Carolina attorneys to remain a part of the residential real estate transaction, this is not an "attorney issue" – this is a "consumer issue." Of course, some banks might prefer to have attorneys removed from the transaction so as to handle closings themselves and collect additional fees for their own benefit. It is important to recognize that attorneys representing consumers in a real estate closing are often the only parties in a transaction that ever call a "foul" on the other participants in the deal, even to the extent of advising the consumer against proceeding with an unfavorable transaction. Sometimes consumers are far better off terminating their closing or seeking alternate financing. The closing attorney is the only party ethically bound to provide the consumer with unbiased guidance in those difficult situations. The regulated banks will have a much easier time getting deals done in accordance with their own best interests, regardless of the interests of consumers, if the consumer does not have the advocate, the advisor, the confidant – that is the North Carolina attorney.

To that end, we respectfully request that you assist in the education of the regulated lenders and clarify the misunderstandings that appear to exist in the interpretation of your April Memo and the application of applicable federal and North Carolina law to ensure that the "practice of law" exclusion in Dodd-Frank is followed and the consumer retains the right to choose his or her own attorney. If you need any additional information, we stand ready to assist.

Sincerely,

NORTH CAROLINA BAR ASSOCIATION
REAL PROPERTY SECTION

By: _____
William E. Manning, Jr.
Chair, Residential Committee

cc: The Honorable Tim Johnson, Chairman, Senate Banking, Housing and Urban Affairs Committee
The Honorable Mike Crapo, Ranking Member, Senate Banking, Housing and Urban Affairs Committee
The Honorable Jeb Hensarling, Chairman, House Financial Services Committee

The Honorable Maxine Waters, Ranking Member, House Financial Services Committee
The Honorable Bob Goodlatte, Chairman, House Judiciary committee
The Honorable John Conyers, Jr., Ranking Member, House Judiciary Committee
The Honorable Richard Burr, United States Senator
The Honorable Kay Hagan, United States Senator
Mr. Thomas Lunsford, Executive Director of the North Carolina State Bar
Mr. M. Keith Kapp, President of the North Carolina State Bar
Mr. Ronald G. Baker, Sr., President Elect of the North Carolina State Bar
Mr. Mike Wells, President of the North Carolina Bar Association
Mr. Alan Duncan, President-Elect of the North Carolina Bar Association
Mr. David N. Woods, Chairman of the Real Property Section of the North Carolina Bar Association
Mr. Allan Head, Executive Director of the North Carolina Bar Association
Ms. Laurel G. Bellows, President of the American Bar Association
Mr. James R. Silkenat, President-Elect of the American Bar Association
Mr. Thomas M. Susman, Director, ABA Governmental Affairs Committee
Mr. Matthew J. Powers, President of North Carolina Land Title Association
Mr. Frank Pellegrini, President of American Land Title Association
The Honorable G. K. Butterfield, United States Representative
The Honorable Renee Ellmers, United States Representative
The Honorable Walter B. Jones, Jr., United States Representative
The Honorable David Price, United States Representative
The Honorable Virginia Foxx, United States Representative
The Honorable Howard Coble, United States Representative
The Honorable Mike McIntyre, United States Representative
The Honorable Richard Hudson, United States Representative
The Honorable Robert Pittenger, United States Representative
The Honorable Patrick T. McHenry, United States Representative
The Honorable Mark Meadows, United States Representative
The Honorable Mel Watt, United States Representative
The Honorable George Holding, United States Representative
Ms. Monica Jackson, Consumer Financial Protection Bureau
Mr. Richard Horn, Senior Counsel & Special Advisor Consumer Financial Protection Bureau

Attachment C

The North Carolina State Bar

OFFICE OF THE PRESIDENT
M. Keith Kapp
301 Fayetteville Street
Suite 1700
Raleigh, North Carolina 27601
Telephone: 919/981-4024

February 19, 2013

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552

Dear Ms. Jackson:

The North Carolina State Bar (the State Bar) is an agency of the State of North Carolina responsible for regulating the professional conduct of licensed lawyers for the protection of the public. *See* N.C.Gen. Stat. §84-23(a). The undersigned are its officers. We have recently become aware that the Consumer Financial Protection Bureau ("Bureau") may be considering regulations that would require lenders to "vet" attorneys in the same manner that lenders would vet other service providers. It has also become apparent that some financial institutions making home loans in our state are using third-party service providers to vet attorneys for the purpose of qualifying them to close real estate transactions. We are concerned that the activities of these "vetting" companies are likely inconsistent with the State Bar's statutory regulatory authority over the conduct of lawyers in North Carolina. In addition, we are concerned that the widespread use of third-party vetting could increase the cost of real estate transactions in our state without providing any benefit to the lenders or consumers who are engaged in real estate transactions.

Our purpose in writing is to provide you with information regarding our current regulatory program and to make you aware of specific concerns relating to the possible implications of vetting. Please understand that we recommend no particular regulatory response on the part of the Bureau at this time. We are simply concerned that federal regulation may not be necessary or productive, and may interfere with the regulation of lawyer conduct that historically has been left to the states. In North Carolina, we believe the State Bar's regulation of lawyers has served our citizens well for many years by fostering a large contingent of honest, competent and professionally responsible real estate lawyers. We hope that you will consider this circumstance and our input as you assess the impact of a relatively new and possibly unwholesome business practice.

In North Carolina, lawyers are routinely and intimately involved in the conveyancing and financing of real estate. In virtually every transaction, a licensed attorney is called upon to provide a title opinion, to obtain a title insurance policy, to draft documents conveying the title and/or securing a

loan, to counsel the buyer/borrower, to close the deal, and to update the title prior to recording any deed and/or deed of trust. This level of attorney involvement has had many salutary effects over many years. It has tended to stabilize and validate land titles, it has protected consumers from folly and fraud, and it has kept transactional costs low relative to the national standard.

The State Bar works diligently to ensure that its licensees have the requisite competence and integrity to well serve the interests of consumers. It approves the rules of the North Carolina Board of Law Examiners which administers the admissions process in regard to persons wishing to practice law in our state. Once applicants for licensure have been able to demonstrate that they possess sufficient learning and integrity to warrant the confidence of our citizens, they are licensed and become members of the State Bar. All members are required to adhere to the high standards of conduct embodied in the State Bar's Rules of Professional Conduct. The rules are strictly enforced, and any lawyer whose conduct evinces professional unfitness is liable to be disciplined severely. In those few situations when the dishonesty of licensees results in financial loss, the lawyers of North Carolina respond collectively through the State Bar's Client Security Fund to compensate victims. Competence is encouraged by requiring that each lawyer obtain a specified amount of approved continuing legal education every year. Real estate lawyers who meet rather stringent criteria relating to competence and experience can be certified as specialists in real property law by the State Bar's Board of Legal Specialization.

We wish to emphasize that the State Bar does not vet real estate lawyers outside the context of the certification program mentioned in the preceding paragraph. Nevertheless, our regulatory scheme is comprehensive, well designed to engender competence and integrity, and rigorously implemented. It functions as an expression of the federalist ideal that the regulation of attorneys is properly the responsibility of the state in which those attorneys practice. This is particularly true in regard to real estate. Almost by definition, nothing is more local and of more local concern than land. We would suggest that federal regulations should do nothing expressly or implicitly to impair the effectiveness of state regulation where the conveyancing of real estate is concerned.

We are also concerned that any regulation that requires or even encourages vetting of lawyers by third-party companies may have unintended and unfortunate consequences. The attorney-client relationship is an important fiduciary relationship that requires trust and confidence between attorney and client. To the extent that unregulated vetting companies deny opportunity to presumptively competent lawyers who are not willing to pay substantial fees to be vetted or who do not qualify based on unknown, unverifiable and possibly illegitimate criteria, consumers will almost certainly be denied counsel of their choice. To the extent that the number of lawyers able to compete for real estate business is artificially limited by vetting companies, whether by the fees that the vetting companies charge or their vetting processes, the cost of legal services is likely to increase.

It appears that vetting companies actually do very little substantive vetting. At least upon cursory examination of some of their web sites, they appear to disclaim any representations as to the legal competence of the vetted attorneys and, in fact, appear to be doing nothing more that performing glorified credit checks. This kind of vetting is really meaningless since most lenders and title insurance companies doing business in this state require attorneys who are approved to handle

matters in which they are involved to carry a specified amount of liability insurance. We have also observed that some vetting companies promise "24/7 monitoring" of real estate attorneys. In our experience, that would be impossible to achieve. To the extent that the criteria employed by vetting companies are unrelated to actual, demonstrable competence, consumers may be misled about the protection that they are being provided and subjected to risks that could be better managed through meaningful freedom of choice.

Finally, we are concerned about the ethical obligations of lawyers who deal with vetting companies. A fundamental feature of the attorney-client relationship is confidentiality. If lawyers are required to divulge confidential information in order to satisfy the demands of vetting companies, serious breaches of fundamental ethical obligations may be unavoidable. Lawyers are also ethically prohibited from paying for client referrals. It is particularly troublesome from an ethical standpoint that the vetting companies appear to be touting their ability to generate referrals to participating attorneys rather than their interest in protecting clients. In our experience, such arrangements are not likely to lead to consumer protection, but only to put pressures on attorneys to act inconsistently with their professional obligations.

Thank you very much for your consideration of our information and our concerns. We believe that Congress was wise in enacting Section 1027 (e) of the Dodd-Frank Act to state that "the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged by an attorney as part of the practice of law under the laws of a state in which the attorney is licensed to practice law." As we have stated above, we are concerned that allowing or requiring attorneys to be vetted as a condition to them being hired by lenders could very well have consequences that are inconsistent with the laudable goal of consumer protection that the Bureau is seeking in its regulations.

If you are in need of additional information, please do not hesitate to contact us. We trust that our views will be of assistance to the Bureau as it seeks to work cooperatively and effectively with agencies like the North Carolina State Bar to protect the interests of consumers throughout the United States.

Very truly yours,

M. Keith Kapp
President

Ronald G. Baker, Sr.
President-elect

Ronald L. Gibson
Vice President

CC: William E. Manning, Jr., North Carolina Bar Association Chair, Residential Committee
The Honorable Tim Johnson, Chairman, Senate Banking, Housing and Urban Affairs Committee
The Honorable Richard C. Shelby, Ranking Member, Senate Banking, Housing and Urban Affairs Committee
The Honorable Spencer Bachus, Chairman, House Financial Services Committee
The Honorable Barney Frank, Ranking Member, House Financial Services Committee
The Honorable Lamar Smith, Chairman, House Judiciary Committee
The Honorable John Conyers, Jr. Ranking Members, House Judiciary Committee
The Honorable Richard Burr, United States Senator
The Honorable Kay Hagan, United States Senator
Mr. Thomas Lunsford, Executive Director of the North Carolina State Bar
Mr. Mike Wells, President of the North Carolina Bar Association
Mr. Alan Duncan, President-Elect of the North Carolina Bar Association
Mr. Robert Sheppard, Chairman of the Real Property Section of the North Carolina Bar Association
Mr. Allan Head, Executive Director of the North Carolina Bar Association
Ms. Laurel G. Bellows, President of the American Bar Association
Mr. James R. Silkenat, President-Elect of the American Bar Association
Mr. Thomas M. Susman, Director, ABA Governmental Affairs Committee
The Honorable Joshua Stein, North Carolina Senate
The Honorable G.K. Butterfield
The Honorable Renee Ellmers
The Honorable Walter B. Jones, Jr.
The Honorable David Price
The Honorable Virginia Foxx
The Honorable Howard Coble
The Honorable Mike McIntyre
The Honorable Larry Kissell
The Honorable Sue Myrick
The Honorable Patrick McHenry
The Honorable Heath Shuler
The Honorable Melvin Watt
The Honorable Brad Miller
Ms. Nancy Short Ferguson
Mr. Benjamin R. Kuhn
Mr. Mark W. Merritt
Mr. James R. Fox

Attachment D

NORTH CAROLINA
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

November 6, 2012

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, DC 20552

Re: Docket Number CFPB-2012-0028-0353
UPLOADED AT http://www.regulations.gov/#!submitComment;D=CFPB-2012-0028-0353

Dear Ms. Jackson:

The members of the North Carolina Bar Association have asked the Real Property section of the North Carolina Bar Association to step forward and advocate for the protection of our clients in the state of North Carolina. We respectfully submit the following comments to the Consumer Financial Protection Bureau (hereinafter "CFPB") in response to the above referenced Proposed Rule (hereinafter "Proposed Rule") as we are concerned that some of the changes contained in the Proposed Rule will have unintended consequences that may harm the very citizens that they are intended to protect. We ask that our concerns be considered before these changes are implemented in the final rule.

In North Carolina, Consumer Protection is Client Protection

While we collectively applaud the strong emphasis being placed upon "consumer" protection, we are concerned that some of the "protections" may have unintended consequences that will negatively impact our "clients." As attorneys, we are in the "client" protection business, which the CFPB has defined as the consumer. However, we view them as something more than a mere consumer, they are our client(s). We would respectfully submit that North Carolina attorneys are much more protective of our clients than any creditor, lender, loan originator, incidental service provider or governmental agency is of the same individual as a "consumer."

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We consider the CFPB and the licensed attorney in North Carolina to be working toward the same goal. The licensed attorneys in North Carolina have been protecting their clients from the perils of a residential real estate transaction for hundreds of years. We welcome the help from the newly formed CFPB. Together we can make sure that there are no unintended consequences that detrimentally affect our clients, your consumers.

A. North Carolina Attorneys Are Protecting Our Clients - Your Consumers

Please indulge us in a very important distinction. We refer to the individuals that we protect as our "client," rather than a consumer. Our relationship is deeper than that of an individual selling almost any other service. While it is true that the client is buying a service, it is a professional service that is the result of years of education, training and experience. Case in point, a doctor is selling a service, but that doctor will always refer to his "consumer" as a patient.

Client protection is foremost in the mind of North Carolina attorneys, the North Carolina Bar Association and the North Carolina State Bar. North Carolina has been consistent in its defense of our clients. Attorneys in North Carolina have served the role as the primary protector of the client on their path to the closing table, at the closing table and after the closing table. North Carolina is different from a lot of states. Real estate closings are conducted by licensed North Carolina attorneys who are charged with putting the client's interest before their own.

The preamble of the North Carolina Rules of Professional Conduct provides that the North Carolina attorney is more than consumer protection; to wit:

> [1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.
>
> [2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As evaluator, a lawyer acts by examining a client's legal

> affairs and reporting about them to the client or to others. (Emphasis Added) (27 NCAC 02 Rule 0.1)

North Carolina attorneys serve all of these roles - advisor, advocate and negotiator. While serving these roles, that same attorney is duty bound to put the needs of the client before their own. The North Carolina attorneys serve as a watchdog to protect our clients from the numerous hazards that may affect our clients in the purchase or refinance of their home, including, but not limited to, banks, realtors, untrained lay persons, and well-meaning but potentially harmful governmental regulations.

It is important to note that the attorney has an attorney-client relationship which, in many cases, is derived over many years or decades of practice and experience. This type of trust, by association, transferred as confidence in the transaction and those handling the transaction for the client. The CFPB should encourage this sense of security, transparency and confidence in the transaction, which can and will be brought by a licensed attorney and inures to the benefit of our clients - your consumers.

B. North Carolina Attorneys Are Protecting Our Clients' Confidential Information

Since the inception of our country, attorneys have been called upon to protect the confidences of our clients. As such, the legal profession has been designated as one of the few special relationships with the honor of having privileged communications with our clients. This time honored and legally recognized distinction of privileged communication between attorney and client is second in time only to the privileged communication between a parishioner and a priest and/or minister and closely followed by the privileged communication between a doctor and patient. This 236 year old distinction is made in the law because there may be things that need to be shared with the attorney in order to receive the best advice and guidance. If a client, in an effort to protect themselves, leaves out important information they could receive deficient advice. There are too many things to mention that you would feel comfortable sharing with your attorney that you would not want to share with your banker or mortgage broker. The communication between the attorney and a client is a safe place for the client, which should be preserved and not be removed or diminished. Removing the attorney from the closing table (or limiting the attorney's effectiveness at the closing table), would remove that client's ability to get the best information from a trained, licensed experience professional that cannot hurt them with the confidences they share.

It is noteworthy that our clients have enjoyed a financial right to privacy for hundreds of years. The consumer did not get that same right from lenders until November 12, 1999 and the passage of Gramm–Leach–Bliley Act, also known as the Financial Services Modernization Act of 1999, (Pub.L. 106-102, 113 Stat. 1338).

C. North Carolina is Dedicated to Protecting Our Clients From the Unauthorized Practice of Law

When looking for guidance on new legal issues, this country has always looked to precedent. Historically and by virtue of the Tenth Amendment, it has been and remains the province of the states to administer justice and regulate the profession of the practice of law. This is observed as easily as acknowledging that each state has its own bar exam. In North Carolina, there are rigorous background checks, required moral and ethical screening and strenuous testing requirements. This is not to mention that the attorneys spent an additional three years of post-graduate education before being allowed to undergo the test and checks prior to licensure. Finally, every North Carolina attorney takes an oath to demean themselves to the practice of law and put the concerns of their client above all else.

1. The North Carolina State Bar Protecting Our Clients from Unauthorized Practice of Law.

The North Carolina State Bar is the licensing and regulatory agency of the State of North Carolina that governs and disciplines the legal profession. It administers the bar examination, continuing legal education, the Rules of Professional Conduct and the disciplinary proceedings. The North Carolina State Bar promulgates and interprets the Rules of Professional Conduct. To further protect the consumer, the North Carolina State Bar issued an advisory opinion on the Rules of Professional Conduct on the following question:

Issue 1: **May a non-lawyer handle a residential real estate closing for one or more of the parties to the transaction?**

Opinion 1: **No.**

Residential real estate transactions typically involve several phases, including the following: reviewing the purchase agreement for any conditions that must be met before closing; abstracting titles; providing an opinion on title; applying for title insurance policies, including title insurance policies that may require tailored coverage to protect the interests of the lender, the owner, or both[i]; preparing legal

> documents, such as deeds (in the case of a purchase transaction), deeds of trust, and lien waivers or affidavits; interpreting and explaining documents implicating parties' legal rights, obligations, and options; resolving possible clouds on title and issues concerning the legal rights of parties to the transaction; overseeing execution and acknowledgement of documents in compliance with legal mandates; handling the recordation and cancellation of documents in accordance with North Carolina law; disbursing proceeds when legally permitted after legally-recognized funds are available and all closing conditions have been satisfied; and providing a post-closing final opinion of title for title insurance after all prior liens have been satisfied. These and other functions are sometimes called, collectively, the "closing" of the residential real estate transaction. As detailed below, the North Carolina General Assembly has determined specifically that only persons who are licensed to practice law in this state may handle most of these functions. . . . (Authorized Practice Advisory Opinion 2002-1, January 24, 2003, Revised January 26, 2012)

The State Bar went further to define those aspects of the residential real estate closing that are the practice of law in the State of North Carolina. A true and accurate copy of this Authorized Practice Advisory Opinion 2002-1 in its entirety is attached hereto as Exhibit A for your easy reference. (May also be found at the following URL - http://www.ncbar.com/programs/auth_notes.asp#opinion2002)

2. The North Carolina General Assembly Protecting Our Clients from the Unauthorized Practice of Law

The North Carolina General Assembly defined the "Practice of Law" to further clarify the "client" protection extended in the state.

> **NCGS § 84-2.1. "Practice law" defined.** The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, **specifically including the preparation or aiding in the preparation of deeds, mortgages, . . .; abstracting or passing upon titles, . . . or assisting by advice, counsel, or otherwise in any legal work**; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular

> acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition. . . . (Emphasis Added)
>
> **NCGS § 84-4. Persons other than members of State Bar prohibited from practicing law.** Except as otherwise permitted by law, **it shall be unlawful** for any person or association of persons, **except active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law**, . . . to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor-at-law, or in furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or association of persons except active members of the Bar, for or without a fee or consideration, to give legal advice or counsel, perform for or furnish to another legal services, or to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust, or to organize corporations or prepare for another person, firm or corporation, any other legal document..... (Emphasis Added)

If a lay person settlement service is used to close loans, the individuals involved would be subjecting themselves criminal penalties for their illegal activity.

3. The North Carolina Attorneys Protecting Our Clients from the Unauthorized Practice of Law

In addition to the criminal penalties the North Carolina General Assembly created a path for the attorneys and other individuals in the state to protect our clients by means of a private cause of action.

> **NCGS § 84-10.1. Private cause of action for the unauthorized practice of law.** If any person knowingly violates any of the provisions of G.S. 84-4 through G.S. 84-6 or G.S. 84-9, fraudulently holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in G.S. 84-37(a), or knowingly aids and abets another person to commit the unauthorized practice of law,

> in addition to any other liability imposed pursuant to this Chapter or any other applicable law, any person who is damaged by the unlawful acts set out in this section shall be entitled to maintain a private cause of action to recover damages and reasonable attorneys' fees.

If a lay person settlement service is used to close loans, the individuals involved would be subjecting themselves civil penalties for their illegal activity, in addition to the criminal penalties under North Carolina law. Additionally, any fees paid to a non-attorney for the performance of services amounting to the unauthorized practice of law are subject to being disgorged by a consumer.

D. Protecting the Lenders and Clients on the Issuance of Title Insurance - Only In Connection With Attorney's Representation of Client

In addition to the protections afforded our clients by the North Carolina State Bar, the North Carolina General Assembly has placed similar protections for our clients from lay persons in matters regarding the title to our client's property.

> **§ 58-26-1. Purpose of organization; formation; insuring closing services; premium rates; combined premiums for lenders' coverages.**
> (a) Companies may be formed in the manner provided in this Article (sic. Title Insurance Companies) for the purpose of furnishing information in relation to titles to real estate and of insuring owners and others interested therein against loss by reason of encumbrances and defective title; provided, however, **that no such information shall be so furnished nor shall such insurance be so issued as to North Carolina real property unless and until the title insurance company has obtained the opinion of an attorney, licensed to practice law in North Carolina and not an employee or agent of the company, who has conducted or caused to be conducted under the attorney's direct supervision a reasonable examination of the title**. The company shall cause to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. **A company may also insure the proper performance of services necessary to conduct a real estate closing performed by an approved attorney licensed to practice in North Carolina**. Provided, however, nothing in this section shall be construed to prohibit or preclude a title insurance

company from insuring proper performance by its issuing agents. (Emphasis Added, N.C.G.S. § 58-26-1)

A licensed attorney is a necessary and integral part of every closing of a real estate transaction in the State of North Carolina. Title insurance may not be issued unless and until the title has been certified by a licensed attorney. Such certifying attorney may not be employed by a title insurance company. To that end, the licensed attorney is the party for whom the title insurance company is authorized by statute to issue the Insured Closing Letter as further protection for North Carolina clients (consumer) and lenders.

E. Attorneys are a Cost Effective Protection of the Client

At every turn the legal profession is challenged by unfair and inaccurate attacks on its image as overcharging for anything and everything. In the context of a residential real estate closing, the average closing costs in North Carolina have traditionally been lower than the other states. In 2011, North Carolina had the lowest closing costs (on average) of any state in the union. (Information can be found at http://www.bankrate.com/finance/mortgages/2012-closing-costs/closing-costs-by-state.aspx)

F. Lender's "Provider Lists" May Limit The Client's Opportunity to Representation of their Choice

One of the principal protections of our clients (your consumers) is their freedom to choose legal counsel to represent their interests. If lenders are faced with extraordinary penalties and fines for the failure of the new Closing Disclosure to meet the requirements of the CFPB Proposed Rule, then lenders will reduce the numbers of approved closing attorneys allowed to represent them at closing. This act will limit your consumer's choices and potentially expose them to harm.

Lender-provided lists are a very real and unintended consequence of the Proposed Rule. The client (consumer) will find his or her choice of representation limited to those professionals that are willing to limit their fees to the pressures of artificial business constraints set forth by certain lending institutions. Each client should have the right to choose their own legal representation, not merely select from a list of the lowest bidders.

Since the presence of a closing attorney is required in North Carolina to protect the rights of the client (your consumer) at closing, their choice should not be limited. Please note that it is incumbent on an attorney in this state to only represent clients in those matters where such attorney is competent, informed and skilled. The North Carolina Rules of Professional Conduct provide:

> A lawyer shall not handle a legal matter that the lawyer knows or should know he or she is not competent to handle without associating with a lawyer who is competent to handle the matter. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.(Emphasis Added) (27 NCAC 02 Rule 1.01)

G. Licensed Attorneys Should Be Exempt from Vetting Requirements

We would respectfully suggest the Proposed Rule should include an exemption from the vetting requirements for licensed attorneys acting in the role of settlement agents in a real estate transaction in an approved attorney state, such as North Carolina. Specifically, the approved attorney in North Carolina:

a) Is the client's advisor;
b) Is the client's advocate;
c) Is the client's negotiator;
d) Is the client's confidant;
e) Is the only one legally capable of providing many of the services required in a real estate closing;
f) Is vetted by the North Carolina State Bar;
g) Is disciplined by the North Carolina State Bar;
h) Is backed up by the North Carolina State Bar's Client Security Fund; and
i) If an Insured Closing Letter is issued, is covered by a regulated title insurance company.

The Dodd-Frank Act includes a broad practice-of-law exclusion specifically stating that the CFPB does not have supervisory or enforcement authority over attorneys that are engaged in the practice of law and in an attorney-client relationship with their consumer clients. A recent HUD final rule is consistent with the Dodd-Frank exclusion but more closely tracks the attorney exemption in Federal Trade Commission's Mortgage Assistance Relief Services, which exempts the vast majority of practicing lawyers who help consumer clients renegotiate their mortgages to avoid foreclosure.

SEC. 1027. **LIMITATIONS ON AUTHORITIES OF THE BUREAU; PRESERVATION OF AUTHORITIES**.

(e) **EXCLUSION FOR PRACTICE OF LAW**.—

(1) IN GENERAL.—Except as provided under paragraph (2), the **Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law**.

(2) RULE OF CONSTRUCTION.—Paragraph (1) **shall not be construed so as to limit the exercise by the Bureau of any supervisory, enforcement, or other authority regarding the offering or provision of a consumer financial product or service** described in any subparagraph of section 1002(5)—

(A) that is not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship; or

(B) that is otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service.

(3) EXISTING AUTHORITY.—Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

HUD included a broad exemption for attorneys in that rule implementing the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). This exemption was created in recognition of the points raised by the American Bar Association and state bar associations in Florida, Missouri, New Hampshire, Oregon and North Carolina. These associations urged HUD to expand lawyer exemption in the rule to protect the confidential lawyer-client relationship and traditional state court regulation of the legal profession.

The confusion only arises here in the perceived distinction between the role of attorneys engaged in the practice of law and attorneys in their role as "settlement agents." There are many states that do not make a distinction between the two, however, such a distinction does exist in the State of North Carolina. The CFPB should acknowledge the State of North Carolina's sovereign right to regulate and administer the legal profession in North Carolina.

We thank you for the opportunity to comment on the Proposed Rule and respectfully request your consideration of our comments, the role of the North Carolina attorney at the closing table and the best interests of our clients in promulgating the final rule. We consider the CFPB and the licensed attorney in North Carolina to be working toward the same goal. The licensed attorneys in North Carolina have been protecting their clients from the perils of a residential real estate transaction for hundreds of years. We welcome the help from the newly formed CFPB. Together we

can make sure that there are no unintended consequences that detrimentally affect our clients, your consumers.

Sincerely,

NORTH CAROLINA BAR ASSOCIATION
REAL PROPERTY SECTION

By: _____
William E. Manning, Jr.
Chair, Residential Committee

cc: The Honorable Tim Johnson, Chairman, Senate Banking, Housing and Urban Affairs Committee
The Honorable Richard C. Shelby, Ranking Member, Senate Banking, Housing and Urban Affairs Committee
The Honorable Spencer Bachus, Chairman, House Financial Services Committee
The Honorable Barney Frank, Ranking Member, House Financial Services Committee
The Honorable Lamar Smith, Chairman, House Judiciary committee
The Honorable John Conyers, Jr., Ranking Member, House Judiciary Committee
The Honorable Richard Burr, United States Senator
The Honorable Kay Hagan, United States Senator
Mr. Thomas Lunsford, Executive Director of the North Carolina State Bar
Mr. Mike Wells, President of the North Carolina Bar Association
Mr. Alan Duncan, President-Elect of the North Carolina Bar Association
Mr. Robert Sheppard, Chairman of the Real Property Section of the North Carolina Bar Association
Mr. Allan Head, Executive Director of the North Carolina Bar Association
Ms. Laurel G. Bellows, President of the American Bar Association
Mr. James R. Silkenat, President-Elect of the American Bar Association
Mr. Thomas M. Susman, Director, ABA Governmental Affairs Committee
The Honorable Joshua Stein, NC Senate
The Honorable G. K. Butterfield
The Honorable Renee Ellmers
The Honorable Walter B. Jones, Jr.
The Honorable David Price
The Honorable Virginia Foxx
The Honorable Howard Coble
The Honorable Mike McIntyre
The Honorable Larry Kissell
The Honorable Sue Myrick
The Honorable Patrick McHenry
The Honorable Heath Shuler
The Honorable Melvin Watt
The Honorable Brad Miller

EXHIBIT A
(May be found at the following URL => http://www.ncbar.com/programs/auth_notes.asp#opinion2002)

Authorized Practice Advisory Opinion 2002-1

January 24, 2003
Revised January 26, 2012

On the Role of Laypersons in the Consummation of Residential Real Estate Transactions

The North Carolina State Bar has been requested to interpret the North Carolina unauthorized practice of law statutes (N.C. Gen. Stat. §§84-2.1 to 84-5) as they apply to residential real estate transactions. The State Bar issues the following authorized practice of law advisory opinion pursuant to N.C. Gen. Stat. §84-37(f) after careful consideration and investigation. This opinion supersedes any prior opinions and decisions of any standing committee of the State Bar interpreting the unauthorized practice of law statutes to the extent those opinions and decisions are inconsistent with the conclusions expressed herein. As a result of its review of the activities of more than 50 nonlawyer service providers since the adoption of this opinion on January 24, 2003, including injunctions issued against two companies, the Committee is clarifying the opinion concerning issues that it has addressed since adoption of the opinion.

Issue 1:
May a nonlawyer handle a residential real estate closing for one or more of the parties to the transaction?

Opinion 1:
No. Residential real estate transactions typically involve several phases, including the following: reviewing the purchase agreement for any conditions that must be met before closing; abstracting titles; providing an opinion on title; applying for title insurance policies, including title insurance policies that may require tailored coverage to protect the interests of the lender, the owner, or both[i]; preparing legal documents, such as deeds (in the case of a purchase transaction), deeds of trust, and lien waivers or affidavits; interpreting and explaining documents implicating parties' legal rights, obligations, and options; resolving possible clouds on title and issues concerning the legal rights of parties to the transaction; overseeing execution and acknowledgement of documents in compliance with legal mandates; handling the recordation and cancellation of documents in accordance with North Carolina law; disbursing proceeds when legally permitted after legally-recognized funds are available and all closing conditions have been satisfied; and providing a post-closing final opinion of title for title insurance after all prior liens have been satisfied. These and other functions are sometimes called, collectively, the "closing" of the residential real estate transaction. As detailed below, the North Carolina General Assembly has determined specifically that

only persons who are licensed to practice law in this state may handle most of these functions.[ii]

A person who is not licensed to practice law in North Carolina and is not working under the direct supervision of an active member of the State Bar may not perform functions or services that constitute the practice of law.[iii] Under the express language of N.C. Gen. Stat. §§ 84-2.1 and 84-4, a nonlawyer who is not working under the direct supervision of an active member of the State Bar would be engaged in the unauthorized practice of law if he or she performs any of the following functions for one or more of the parties to a residential real estate transaction: (i) preparing or aiding in preparation of deeds, deeds of trust, lien waivers or affidavits, or other legal documents; (ii) abstracting or passing upon titles; or (iii) advising or giving an opinion upon the legal rights or obligations of any person, firm, or corporation. Under the express language of N.C. Gen. Stat. § 84-4, it is unlawful for any person other than an active member of the State Bar to hold himself or herself out as competent or qualified to give legal advice or counsel or as furnishing any services that constitute the practice of law. Additionally, under N.C. Gen. Stat. § 84-5, a business entity, including a corporation or limited liability company, may not provide or offer to provide legal services or the services of attorneys to its customers even if the services are performed by licensed attorneys employed by the entity. *See, Duke Power Co. v. Daniels*, 86 N.C. App. 469, 358 S.E.2d 87 (1987); *Gardner v. North Carolina State Bar*, 316 N.C. 285, 341 S.E.2d 517 (1986), and *State ex rel. Seawell v. Carolina Motor Club, Inc.*, 209 N.C. 624, 184 S.E. 540 (1936).

Accordingly, a nonlawyer is engaged in the unauthorized practice of law if he or she performs any of the following functions in connection with a residential real estate closing (identified only as examples):

1. Abstracts or provides an opinion on title to real property;

2. Explains the legal status of title to real estate, the legal effect of anything found in the chain of title, or the legal effect of an item reported as an exception in a title insurance commitment except as necessary to underwrite a policy of insurance and except that a licensed title insurer, agency, or agent may explain an underwriting decision to an insured or prospective insured, including providing the reason for such decision;

3. Explains or gives advice or counsel about the rights or responsibilities of parties concerning matters disclosed by a land survey under circumstances that require the exercise of legal judgment or that have implications with respect to a party's legal rights or obligations;

4. Provides a legal opinion, advice, or counsel in response to inquiries by any of the parties regarding legal rights or obligations of any person, firm, or corporation, including but not limited to the rights and obligations created by the purchase agreement, a promissory note, the effect of a pre-payment penalty, the rights of

parties under a right of rescission, and the rights of a lender under a deed of trust;

5. Advises, counsels, or instructs a party to the transaction with respect to alternative ways for taking title to the property or the legal consequences of taking title in a particular manner;

6. Drafts a legal document for a party to the transaction or assists a party in the completion of a legal document, or selects or assists a party in selecting a form legal document among several forms having different legal implications;

7. Explains or recommends a course of action to a party to the transaction under circumstances that require the exercise of legal judgment or that have implications with respect to the party's legal rights or obligations;

8. Attempts to settle or resolve a dispute between the parties to the transaction that will have implications with respect to their respective legal rights or obligations;

9. Determines that all conditions of the purchase agreement or the loan closing instructions have been satisfied in accordance with the buyer's or the lender's interests or instructions;

10. Determines that the deed and deed of trust may be recorded after an update of title for any intervening conveyances or liens since the preliminary opinion;

11. Determines that the funds may be legally disbursed pursuant to the North Carolina Good Funds Settlement Act, N.C. Gen. Stat. § 45A-1 et seq.[iv]

The foregoing list of examples of functions that constitute the practice of law is not exclusive, but reflects a range of responsibilities and duties that involve the following: the exercise of legal judgment; the preparation of legal documents such as deeds, deeds of trust, and title opinions; the explanation or interpretation of legal documents in circumstances that require the exercise of legal judgment; the provision of legal advice or opinions; and the performance of other services that constitute the practice of law.

Issue 2:
May a nonlawyer who is not acting under the supervision of a lawyer licensed in North Carolina (1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; and (2) receive and disburse the closing funds?

Opinion 2:
Yes. So long as a nonlawyer does not engage in any of the activities referenced in Opinion 1, or in other activities that likewise constitute the practice of law, a nonlawyer

may: (1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; or (2) receive and disburse the closing funds.

Although these limited duties may be performed by nonlawyers, this does not mean that the nonlawyer is handling the closing.Since, as described in issue 1 above, the closing is a collection of services, most of which involve the practice of law, a lawyer must provide the necessary legal services.[v]And, since N.C. Gen. Stat. § 84-5 prohibits nonlawyers from arranging for or providing the lawyer or any legal services, nonlawyers may not advertise or represent to lenders, buyers/borrowers, or others in any manner that suggests that the nonlawyer will (i) handle the "closing;" (ii) provide the legal services associated with a closing, such as providing title searches, title opinions, document preparation, or the services of a lawyer for the closing; or (iii) "represent" any party to the closing. [vi]The lawyer must be selected by the party for whom the legal services will be provided.

Notwithstanding this opinion, evidence considered by the State Bar with respect to this advisory opinion indicates that, at the time documents are presented to the parties for execution, a lawyer who is present may identify or be asked about important issues affecting the legal rights or obligations of the parties. A lawyer may provide important legal guidance about such issues, but a nonlawyer is not permitted to do so. Moreover, a consumer's retention of a licensed North Carolina lawyer provides financial protection to the consumer. The North Carolina Rules of Professional Conduct require a lawyer to properly handle all fiduciary funds, including residential real estate closing proceeds. In the event a lawyer mishandles the closing proceeds, the lawyer is subject to professional discipline, and the State Bar Client Security Fund may provide financial assistance for a person injured by the lawyer's improper application of funds. On the whole, the evidence considered by the State Bar indicates that it is in the best interest of a consumer to be represented by a lawyer with respect to all aspects of a residential real estate transaction.

The evidence the State Bar has considered suggests, however, that performing administrative or ministerial activities in connection with the execution of residential real estate closing documents and the receipt and disbursement of the closing proceeds does not necessarily require the exercise of legal judgment or the giving of legal advice or opinions. Indeed, the execution of closing documents and the disbursement of closing proceeds may be accomplished—and often have been accomplished—by mail, by email, or by other electronic means, or by some other procedure that would not involve the lawyer and the parties being physically present at one place and time. The State Bar therefore concludes that it should not be presumed that performing the task of overseeing the execution of residential real estate closing documents and receiving and disbursing closing proceeds necessarily involves giving legal advice or opinions or otherwise engaging in activities that constitute the practice of law.

Nonlawyers who undertake such responsibilities, and those who retain their services, should also be aware that (1) the North Carolina State Bar retains oversight authority concerning complaints about activities that constitute the unauthorized practice of law; (2) the North Carolina criminal justice system may prosecute instances of the unauthorized practice of law; and (3) that N.C. Gen. Stat. §84-10 provides a private cause of action to recover damages and attorneys' fees to any person who is damaged by the unauthorized practice of law against both the person who engages in unauthorized practice and anyone who knowingly aids and abets such person. In addition, nonlawyers and consumers should bear in mind that other governmental authorities such as the Federal Trade Commission, the North Carolina Attorney General, district attorneys, and the banking commissioner, have jurisdiction over unfair trade practices and violations of requirements regarding lending practices.

Endnotes

[i] By statute, title insurance in North Carolina can be issued only after the title insurance company has received an opinion of title from a licensed North Carolina attorney who is not an employee or agent of the company and who "has conducted or caused to be conducted under the attorney's direct supervision a reasonable examination of the title."N.C. Gen. Stat. § 58-26-1.

[ii] Except as permitted under *State v. Pledger*, 257 N.C. 634, 127 S.E.2d 337 (1962), which allows a party having a "primary interest" in a transaction to prepare deeds of trust and other documents to effectuate the transaction.

[iii] The State Bar notes that the North Carolina General Assembly and Supreme Court are the entities that have the power to make the ultimate determination whether an activity constitutes the practice of law.

[iv] Since the original adoption of this opinion, the Committee has reviewed numerous complaints concerning nonlawyers, many of whom hold out to the closing parties that they will conduct "closings," including disbursement of funds, at any time of day, including after normal business hours. However, under the Good Funds Settlement Act, N.C. Gen. Stat. § 45A-4, funds may not be disbursed until the deed and deed of trust (if any) have been recorded, which in most counties requires physical delivery to the Register of Deeds during normal business hours. Accordingly, while execution of the documents may be conducted at any time, the actual "closing" and disbursement of funds may not occur until after the required documents are recorded.

[v] Except as permitted under *State v. Pledger, supra,* or by an individual *pro se.*

[vi] Almost without exception, these nonlawyer service providers are corporations or limited liability companies that market their services to lenders, not consumers. Most are also title insurance agents. Accordingly, lenders commonly inform borrowers that the nonlawyer will be conducting the closing without any meaningful opportunity for the borrower to decide to retain a lawyer to protect its interests. Additionally, when the

nonlawyer is a title insurance agent, the borrower usually is given no choice on insurer or available rates. The Committee expresses no opinion whether these actions may violate N.C. Gen. Stat. § 75-17, which prohibits a lender from requiring its borrower to obtain a policy of title insurance from a particular insurance company, agent, broker or other person specified by the lender. Title companies (and other parties) may refer lenders or borrowers to attorneys at their customer's request, but may not require the use of a specific attorney or charge a fee for any such referral.

ALTA Best Practices Framework:

Title Insurance and Settlement Company Best Practices

Version 2.0
Published July 19, 2013

AMERICAN
LAND TITLE
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TM

ALTA Best Practices Framework

The ALTA Best Practices Framework has been developed to assist lenders in satisfying their responsibility to manage third party vendors. The ALTA Best Practices Framework is comprised of the following documentation needed by a company electing to implement such a program.

- ALTA Best Practices Framework: Title Insurance and Settlement Company Best Practices
- ALTA Best Practices Framework: Assessment Procedures
- ALTA Best Practices Framework: Certification Package (Package includes 3 Parts)

Version History and Notes

Date	Version	Notes
1/2/2013	None	Publication of the ALTA Title Insurance and Settlement Company Best Practices, approved by the ALTA Board of Governors on December 20, 2012.
7/19/2013	2.0	Publication of the revised ALTA Title Insurance and Settlement Company Best Practices, along with other documents in the ALTA Best Practices Framework, approved by the ALTA Board of Governors on July 19, 2013.

Title Insurance and Settlement Company Best Practices

Mission Statement

- ALTA seeks to guide its membership on best practices to protect consumers, promote quality service, provide for ongoing employee training, and meet legal and market requirements. These practices are voluntary and designed to help members illustrate to consumers and clients the industry's professionalism and best practices to help ensure a positive and compliant real estate settlement experience. These best practices are not intended to encompass all aspects of title or settlement company activity.

- ALTA is publishing these best practices for the mortgage lending and real estate settlement industry. ALTA accepts comments from stakeholders as the Association seeks to continually improve these best practices. A formal committee of ALTA members regularly reviews and makes improvements to these best practices, seeking comment on each revision.

Definitions

Background Check: A background check is the process of compiling and reviewing both confidential and public employment, address, and criminal records of an individual or an organization. Background checks may be limited in geographic scope. This provision and use of these reports are subject to the limitations of federal and state law.

Company: The entity implementing these best practices.

Escrow: A transaction in which an impartial third party acts in a fiduciary capacity for the seller, buyer, borrower, or lender in performing the closing for a real estate transaction according to local practice and custom. The escrow holders have fiduciary responsibility for prudent processing, safeguarding and accounting for funds and documents entrusted to them.

Escrow Trust Account: An account to hold funds in trust for third parties, including parties to a real estate transaction. These funds are held subject to a fiduciary capacity as established by written instructions.

Federally Insured Financial Institutions: A financial institution that has its deposits insured by an instrumentality of the federal government, including the Federal Deposit Insurance Corporation (FDIC) and National Credit Union Administration (NCUA).

Licenses: Title Agent or Producer License or registration, or any other business licensing requirement as required by state law, or a license to practice law, where applicable.

Non-public Personal Information: Personally identifiable data such as information provided by a customer on a form or application, information about a customer's transactions, or any other information about a customer which is otherwise unavailable to the general public. NPI includes first name or first initial and last name coupled with any of the following: Social Security Number, driver's license number, state-issued ID number, credit card number, debit card number, or other financial account numbers.

Positive Pay or Reverse Positive Pay: Any system by which the authenticity of a check is determined before payment is made by the financial institution against which the check is written.

Settlement: In some areas called a "closing." The process of completing a real estate transaction in accordance with written instructions during which deeds, mortgages, leases and other required instruments are executed and/or delivered, an accounting between the parties is made, the funds are disbursed and the appropriate documents are recorded.

Trial Balance: A list of all open individual escrow ledger record balances at the end of the reconciliation period.

Three-Way Reconciliation: A three-way reconciliation is a method for discovering shortages (intentional or otherwise), charges that must be reimbursed or any type of errors or omissions that must be corrected in relation to an Escrow Trust Account. This requires the escrow trial balance, the book balance and the reconciled bank balance to be compared. If all three parts do not agree, the difference shall be investigated and corrected.

Best Practices

1. **Best Practice: Establish and maintain current License(s) as required to conduct the business of title insurance and settlement services.**

Purpose: Maintaining state mandated insurance licenses and corporate registrations (as applicable) helps ensure the Company remains in good standing with the state.

Procedures to meet this best practice:

- Establish and maintain applicable business License(s).
- Establish and maintain compliance with Licensing, registration, or similar requirements with the applicable state regulatory department or agency.
- Establish and maintain appropriate compliance with ALTA's Policy Forms Licensing requirement.

2. **Best Practice: Adopt and maintain appropriate written procedures and controls for Escrow Trust Accounts allowing for electronic verification of reconciliation.**

Purpose: Appropriate and effective escrow controls and staff training help title and settlement companies meet client and legal requirements for the safeguarding of client funds. These procedures help ensure accuracy and minimize the exposure to loss of client funds. Settlement companies may engage outside contractors to conduct segregation of trust accounting duties.

Procedures to meet this best practice:

- Escrow funds and operating accounts are separately maintained.
  - Escrow funds or other funds the Company maintains under a fiduciary duty to another are not commingled with the Company's operating account or an employee or manager's personal account.
- Escrow Trust Accounts are prepared with Trial Balances.

- On at least a monthly basis, Escrow Trust Accounts are prepared with Trial Balances ("Three-Way Reconciliation"), listing all open escrow balances.

- Escrow Trust Accounts are reconciled.
  - On at least a daily basis, reconciliation of the receipts and disbursements of the Escrow Trust Account is performed
  - On at least a monthly basis, a Three-Way Reconciliation is performed reconciling the bank statement, check book and Trial Balances.
  - Segregation of duties is in place to help ensure the reliability of the reconciliation and reconciliations are conducted by someone other than those with signing authority.
  - Results of the reconciliation are reviewed by management and are accessible electronically by the Company's contracted underwriter(s).
- Escrow Trust Accounts are properly identified.
  - Accounts are identified as "escrow" or "trust" accounts. Appropriate identification appears on all account-related documentation including bank statements, bank agreements, disbursement checks and deposit tickets.
- Outstanding file balances are documented.
- Transactions are conducted by authorized employees only.
  - Only those employees whose authority has been defined to authorize bank transactions may do so. Appropriate authorization levels are set by the Company and reviewed for updates annually. Former employees are immediately deleted as listed signatories on all bank accounts.
- Unless directed by the beneficial owner, Escrow Trust Accounts are maintained in Federally Insured Financial Institutions.
- Utilize Positive Pay or Reverse Positive Pay, Automated Clearing House blocks and international wire blocks, if available.
  - Background Checks are completed in the hiring process. At least every three years, obtain Background Checks going back five years for all employees who have access to customer funds.
- Ongoing training is conducted for employees in management of escrow funds and escrow accounting.

3. Best Practice: Adopt and maintain a written privacy and information security program to protect Non-public Personal Information as required by local, state and federal law.

Purpose: Federal and state laws (including the Gramm-Leach-Bliley Act) require title companies to develop a written information security program that describes the procedures they employ to protect Non-public Personal Information. The program must be appropriate to the Company's size and complexity, the nature and scope of the Company's activities, and the sensitivity of the customer information the Company handles. A Company evaluates and adjusts its program in light of relevant circumstances, including changes in the Company's business or operations, or the results of security testing and monitoring.

Procedures to meet this best practice:

- Physical security of Non-public Personal Information.

- Restrict access to Non-public Personal Information to authorized employees who have undergone Background Checks at hiring.
- Prohibit or control the use of removable media.
- Use only secure delivery methods when transmitting Non-public Personal Information.

- Network security of Non-public Personal Information.
  - Maintain and secure access to Company information technology
  - Develop guidelines for the appropriate use of Company information technology.
  - Ensure secure collection and transmission of Non-public Personal Information.
- Disposal of Non-public Personal Information.
  - Federal law requires companies that possess Non-public Personal Information for a business purpose to dispose of such information properly in a manner that protects against unauthorized access to or use of the information.
- Establish a disaster management plan.
- Appropriate management and training of employees to help ensure compliance with Company's information security program.
- Oversight of service providers to help ensure compliance with a Company's information security program.
  - Companies should take reasonable steps to select and retain service providers that are capable of appropriately safeguarding Non-public Personal Information.
- Audit and oversight procedures to help ensure compliance with Company's information security program.
  - Companies should review their privacy and information security procedures to detect the potential for improper disclosure of confidential information.
- Notification of security breaches to customers and law enforcement.
  - Companies should post the privacy and information security program on their websites or provide program information directly to customers in another useable form. When a breach is detected, the Company should have a program to inform customers and law enforcement as required by law.

4. Best Practice: Adopt standard real estate settlement procedures and policies that help ensure compliance with Federal and State Consumer Financial Laws as applicable to the Settlement process.

Purpose: Adopting appropriate policies and conducting ongoing employee training helps ensure the Company can meet state, federal, and contractual obligations governing the Settlement.

Procedures to meet this best practice:

- Recording procedures.
  - Review legal and contractual requirements to determine Company obligations to record documents and incorporate such requirements in its written procedures.
    - Submit or ship documents for recording to the county recorder (or equivalent) or the person or entity responsible for recording within two (2) business days of the later of (i) the date of Settlement, or (ii) receipt by the Company if the Settlement is not performed by the Company.

- Track shipments of documents for recording.
- Ensure timely responses to recording rejections.
- Addressing rejected recordings to prevent unnecessary delay.
- Verify that recordation actually occurred and maintain a record of the recording information for the document(s).

- Pricing procedures.
  - Maintain written procedures to help ensure that customers are charged the correct title insurance premium and other rates for services provided by the Company. These premiums and rates are determined by a mix of legal and contractual obligations.
    - Utilize rate manuals and online calculators, as appropriate, to help ensure correct fees are being charged for title insurance policy premiums, state-specific fees and endorsements.
    - Ensure discounted rates are calculated and charged when appropriate, including refinance or reissue rates.
    - Quality check files after Settlement to help ensure consumers were charged the company's established rates.
    - Provide timely refunds to consumers when an overpayment is detected.

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

Purpose: Adopting appropriate procedures for the production, delivery, and remittance of title insurance policies helps ensure title companies can meet their legal and contractual obligations.

Procedures to meet this best practice:

- Title policy production and delivery.
  - Title insurance policies are issued and delivered to customers in a timely manner to meet statutory, regulatory or contractual obligations.
    - Issue and deliver policies within thirty days of the later of (i) the date of Settlement, or (ii) the date that the terms and conditions of title insurance commitment are satisfied.
- Premium reporting and remittance.
  - Title insurance policies are reported and premiums are remitted to the underwriter in a timely manner to meet statutory, regulatory or contractual obligations.
    - Report policies (including a copy of the policy) to underwriter by the last day of the month following the month in which the insured transaction was settled.
    - Remit premiums to underwriter by the last day of the month following the month in which the insured transaction was settled.

6. Best Practice: Maintain appropriate professional liability insurance and fidelity coverage.

Purpose: Appropriate levels of professional liability insurance or errors and omissions insurance help ensure title agencies and settlement companies maintain the financial capacity to stand behind their

professional services. In addition, state law and title insurance underwriting agreements may require a company to maintain professional liability insurance or errors and omissions insurance, fidelity coverage or surety bonds.

Procedures to meet this best practice:

- The Company maintains professional liability insurance or errors and omissions insurance.
- The Company complies with requirements for professional liability insurance, errors and omissions insurance, fidelity coverage or surety bonds, as provided by state law or title insurance underwriting agreements.

7. Best Practice: Adopt and maintain written procedures for resolving consumer complaints.

Purpose: A process for receiving and addressing consumer complaints helps ensure reported instances of poor service or non-compliance do not go undiscovered.

Procedures to meet this best practice:

- Consumer complaint intake, documentation and tracking.
  - Standard procedures for logging and resolving consumer complaints helps ensure consumers provide the company with sufficient information to understand the nature and scope of the complaint.
    - Develop a standard consumer complaint form that identifies information that connects the complaint to a specific transaction.
    - Set a single point of contact for consumer complaints.
    - Establish procedures for forwarding complaints to appropriate personnel.
    - Maintain a log of consumer complaints that includes whether and how the complaint was resolved.

FAQ About ALTA's Best Practices

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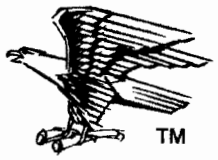

Q What are the best practices?

A *ALTA's Title Insurance and Settlement Company Best Practices are a benchmark for the real estate settlement and mortgage lending industries. They illuminate the high level of professionalism that ALTA members follow to protect consumers and businesses in the real estate and mortgage settlement.*

Q Why did ALTA develop these best practices?

A *Recently, regulators, consumers and investors have increased their pressure on lenders to know more about the service providers they do business with. To help meet this need, ALTA developed the best practices to help members highlight policies and procedures the industry exercises to protect lenders and consumers, while ensuring a positive and compliant real estate settlement experience.*

Q Are these best practices mandatory?

A *No. These best practices are a voluntary tool to help the title industry highlight the safeguards in place to ensure that closing activities meet all applicable laws and regulations.*

Q How were the best practices developed?

A *ALTA's Board of Governors, which includes representatives of both the agent and underwriter community, developed the best practices. Both ALTA's Agent's and Underwriter's Executive Section Committee will play a role in developing tools to make it easier for the industry to adopt the best practices.*

Q How does a title or settlement company use/adopt these best practices?

A *There are a number of ways a title company could utilize these best practices. A title company that wishes to adopt the best practices could start by reviewing its own written policies and procedures. Many title and settlement companies already follow the best practices, but do not have written procedures in place to document it.*

Q Will ALTA provide help or tools to agents to make it easier to adopt these practices?

A *Yes. Over the coming months ALTA is planning on developing a number of resources for its members to make it easy to adopt the best practices. These tools may include sample policies and procedures, marketing materials and special offers for services and products.*

Q Has the lending community reviewed these best practices?

A *Yes. ALTA has shared these best practices with both large and small lenders. We are incorporating their feedback into the best practices to ensure that they are sufficient to meet lender's needs.*

Q Will the best practices be updated?

A *Yes. ALTA is establishing a standing committee (similar to the Forms Committee) to review and update the best practices on an ongoing basis.*

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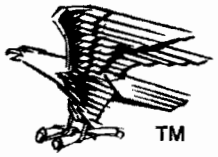

Q Do we as title companies have a say in what should be in the best practices?

A *A. Yes. Like with ALTA's policy forms, revisions to the best practices will be open for public comment after being adopted by the Board of Governors. In addition, after the committee is established, it will accept suggestions for changes to the best practices from the public.*

Q Can non-ALTA members adopt the best practices?

A *Yes. The best practices will be publically available. ALTA is setting a standard for the entire industry.*

Q Can non-ALTA members use the tools that ALTA is developing?

A *ALTA is developing these tools as a member benefit. However, ALTA may offer these tools to non members albeit at an increased cost.*

Q What if someone violates one of the best practices, what will happen between the agent, underwriter and lender as far as liability is concerned?

A *The best practices are voluntary. It is up to agents, underwriters and lenders to determine how to use the best practices in the marketplace.*

Q Will underwriters cancel an agent if they do not adhere to the best practices?

A *The best practices are a voluntary tool. It's up to each underwriter and agent to determine how the best practices will interact with an agency's underwriting agreement.*

Q Does the adoption of these best practices mean lenders are dropping their requirement that agents be vetted?

A *No. ALTA developed the best practices to provide a comprehensive uniform solution for the marketplace. Each lender will determine whether the best practices are sufficient to meet their needs. We know some lenders may want to go further by having companies certified for compliance to the best practices. To meet that market need, ALTA is considering developing a set of model audit standards and certifications. These models would be available for anybody to use to conduct audits or certifications if necessary, including underwriters, accounting firms and law firms.*

Q Has ALTA received any feedback from the Consumer Financial Protection Bureau regarding the best practices?

A *We have shared the concept and the CFPB encourages the industry to continue developing tools that meet the Bureau's expectations of protecting consumers during a financial transaction.*

Q How should agents and attorneys respond to lender requests to sign up and pay third-party vetting companies?

A *ALTA encourages members to reach out to lender clients and learn what they need to meet regulatory requirements. Tell your lenders about your processes and procedures you follow to protect their money and to ensure a compliant settlement experience. In many instances, lenders do not know about what you do internally to protect their funds.*

For more information about the best practices,
go to *www.alta.org/bestpractices.*