

ALTA Best Practices

Presented by

Peter J. Birnbaum
President and CEO
Attorneys' Title Guaranty Fund, Inc.

Jerry T. Gorman
Senior Vice President
Attorneys' Title Guaranty Fund, Inc.

ATG LEGAL EDUCATION

Background

▪ ALTA Best Practices

- It is a benchmark for lenders, consumers, and the regulators.
- Best Practices allows lenders and the public to rely with confidence on our products and services.

ATG LEGAL EDUCATION

Background

▪ Why did ALTA adopt Best Practices?

ATG LEGAL EDUCATION

Background

▪ History

- 2002-2008
 - Subprime Lending Boom
- 2008
 - Collapse of the Financial Markets
 - Real Estate Melt-Down
 - Foreclosure Crisis

ATG LEGAL EDUCATION

Background

- Failures of Regional and National Title Underwriters
- Public, media, and regulators start to get interested in our business.
- The Robo-Signing Scandal

ATG LEGAL EDUCATION

Background

- Banks settle with the Office of the Comptroller of the Currency (OCC), the Department of Justice (DOJ), and 49 of 50 State Attorneys General.
 - \$25 Billion Cash
 - Vendor Supervision

ATG LEGAL EDUCATION

Background

▪ **Consumer Financial Protection Bureau (CFPB)**

- Created by Dodd-Frank Act
- April 2012 Bulletin
- Big Banks Respond

Background

▪ **ALTA Board**

- The need to develop a benchmark; a national standard.

▪ **Roll-Out**

- Industry
- Banks
- Regulators

Background

▪ **Reinvention**

▪ **Challenge to Belief System**

▪ **Protecting our Members and the Public**

Background

- Impact
- Opportunity

ATG LEGAL EDUCATION

Overview

- **Procedures and Controls Regarding Escrow Trust Accounts**
 - Reconciliation
- **Physical Security**
 - Protecting Confidential Customer Information
- **Network Security**
 - Protecting Trust Accounts and Confidential Customer Information
- **Timely Recording of Deeds, Mortgages and Other Documents**

ATG LEGAL EDUCATION

Overview

- **Pricing**
 - Rate and Fee Calculations
- **Reconciliations and Refunds of Consumer Overpayments**
- **Title Policy Delivery**
- **Premium Reporting and Remittance**
- **Errors and Omissions Insurance / Fidelity Coverage**
- **Dealing with Consumer Complaints**

ATG LEGAL EDUCATION

Best Practice 1

▪ **Best Practice:**

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

Best Practice 1

▪ **Purpose:**

- Maintaining state mandated insurance licenses and corporate registrations (as applicable) ensures that the company remains in good standing with the state.

Best Practice 1

▪ **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.

Best Practice 1

▪ **ATG Actions**

- Currently reviewing all state registrations.
- May remove agents who have not been active for a set number of years.
- License verification part of audit process.

Best Practice 2

▪ **Best Practice:**

- Adopt and maintain appropriate written procedures and controls for Escrow Trust Accounts allowing for electronic verification of reconciliation.

Best Practice 2

▪ **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 ensure accuracy and minimize the exposure to loss of client funds. Settlement companies may engage outside contractors to conduct segregation of trust accounting duties.

Best Practice 2

▪ 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.

ATG LEGAL EDUCATION

Best Practice 2

▪ Procedures to meet this best practice:

- 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.

ATG LEGAL EDUCATION

Best Practice 2

▪ Procedures to meet this best practice:

- 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.

ATG LEGAL EDUCATION

Best Practice 2

▪ **Procedures to meet this best practice:**

- Escrow Trust Accounts are reconciled.
 - Segregation of duties is in place to 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 agency's contracted underwriter(s).

Best Practice 2

▪ **Procedures to meet this best practice:**

- 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.

Best Practice 2

▪ **Procedures to meet this best practice:**

- Outstanding file balances are documented.

Best Practice 2

▪ **Procedures to meet this best practice:**

- 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.

Best Practice 2

▪ **Procedures to meet this best practice:**

- Unless directed by the beneficial owner, Escrow Trust Accounts are maintained in Federally Insured Financial Institutions.

Best Practice 2

▪ **Procedures to meet this best practice:**

- Utilize positive pay, Automated Clearing House blocks, and international wire blocks, if available.

Best Practice 2

▪ **Procedures to meet this best practice:**

- Checks are completed in the hiring process and regularly conducted for existing employees.
 - At least every three years, obtain Background Checks going back five years for all employees who have access to customer funds.
 - At least every three years, obtain Credit Reports for all employees who have access to customer funds.

Best Practice 2

▪ **Procedures to meet this best practice:**

- Ongoing training is conducted for employees in proper management of escrow funds and escrow accounting.

Best Practice 2

▪ **ATG Actions**

- Audit process
 - Require separation of funds into escrow account.
 - Do not deposit title premiums in operating account.

Best Practice 2

▪ ATG Actions

- Require three-way, monthly reconciliation of escrow account.
 - Consistent with Rules of Professional Conduct.
 - Developing manual on three-way reconciliation.
 - Use REsource.
 - Training available
 - ATG is looking to improve data entry and processes within REsource, especially Services Screen/HUD-1
- Internal controls reviewed in audit.

Best Practice 2

▪ ATG Actions

- ATG is developing suggestions/standards for agents' bank accounts.
- ATG *Casenotes & Underwriters Bulletin* will have monthly articles covering each of the seven Best Practices.
- ATG will conduct a series of live programs at locations throughout Illinois, Wisconsin, and Indiana on Best Practices in 2013.

Best Practice 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.

Best Practice 3

▪ **Purpose:**

- Federal and state laws (including the Gramm-Leach-Bliley Act) require title companies to develop a written information security program that describes their procedures to protect non-public customer 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.

Best Practice 3

▪ **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 and Credit Reports at hiring.
 - Prohibit or control the use of removable media.
 - Use only secure delivery methods when transmitting Non-public Personal Information.

Best Practice 3

▪ **Procedures to meet this best practice:**

- 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.

Best Practice 3

▪ **Procedures to meet this best practice:**

- Ensure 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.

Best Practice 3

▪ **Procedures to meet this best practice:**

- Establish a disaster management plan.

Best Practice 3

▪ **Procedures to meet this best practice:**

- Appropriate management and training of employees to ensure compliance with company's information security program.

Best Practice 3

▪ **Procedures to meet this best practice:**

- Oversight of service providers to 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.

Best Practice 3

▪ **Procedures to meet this best practice:**

- Audit and oversight procedures to ensure compliance with company's information security program.

Best Practice 3

▪ **ATG Actions**

- ATG is developing compliance standards and assistance programs on Internet and file management security.
- Implement a clean-desk policy.
- Secure file cabinets and work areas.
- ATG to share Privacy Policy Standards.

Best Practice 4

▪ **Best Practice:**

- Adopt standard real estate settlement procedures and policies that ensure compliance with Federal and State Consumer Financial Laws, as applicable.

Best Practice 4

▪ **Purpose:**

- Adopting appropriate policies and conducting ongoing employee training can ensure that a real estate settlement company can meet state, federal, and contractual obligations governing the settlement process and provide a safe and compliant settlement.

Best Practice 4

▪ **Procedures to meet this best practice:**

- Recording procedures.
 - Companies review their legal and contractual requirements to determine their obligations for recording documents and incorporate these requirements in their 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 Settlement.
 - Use electronic recording where available.
 - Track shipments of documents for recording.

Best Practice 4

▪ **Procedures to meet this best practice:**

- Recording procedures.
 - Companies review their legal and contractual requirements to determine their obligations for recording documents and incorporate these requirements in their procedures.
 - Ensure timely responses to recording rejections.
 - Address rejected recordings to prevent unnecessary delay.
 - Verify that recordation actually occurred and maintain a record of the recording information for the document(s).

Best Practice 4

▪ **Procedures to meet this best practice:**

- Pricing procedures.
 - Companies develop procedures to ensure that customers are charged the company's established rates for their services. These rates are determined by a mix of legal and contractual obligations.
 - Utilize rate manuals and online calculators, as appropriate, to 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.

Best Practice 4

▪ **Procedures to meet this best practice:**

- Pricing procedures.
 - Companies develop procedures to ensure that customers are charged the company's established rates for their services. These rates are determined by a mix of legal and contractual obligations.
 - Quality check files after Settlement to ensure consumers were charged the company's established rates.
 - Provide timely refunds to consumers when an overpayment is detected.

Best Practice 4

- **ATG Actions**

- Meet Two-Day Recording Standard
 - Lender closings
 - Outside search providers
 - Not an absolute rule – but need to be timely.

Best Practice 4

- **ATG Actions**

- Rate regulation
 - None in Illinois
 - Adhere to suggested rate standards and ATG by-laws: commercially reasonable.
 - Follow Wisconsin rate structure/deviation requirements.
 - ATG is setting the Risk Rate in Indiana per Indiana Department of Insurance requirements.

Best Practice 5

- **Best Practice:**

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

Best Practice 5

▪ **Purpose:**

- Appropriate procedures for the production, delivery, and remittance of title insurance policies ensures title companies meet their legal and contractual obligations.

Best Practice 5

▪ **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 Settlement if terms and conditions of title insurance commitment have been satisfied.

Best Practice 5

▪ **Procedures to meet this best practice:**

- 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.

Best Practice 5

▪ **ATG Actions**

- Key for ATG agents to deliver policies within 30 days of settlement
- ATG is enhancing procedures for Title Services Complete members so ATG will deliver within 30 days.

Best Practice 5

▪ **ATG Actions**

- Premium and Policy Delivery
 - Use REsource electronic delivery utility to deliver by end of month following the month of settlement.
 - ATG is looking to improve data entry and processes within REsource, especially Services Screen.

Best Practice 6

▪ **Best Practice:**

- Maintain appropriate professional liability insurance and fidelity coverage.

Best Practice 6

▪ **Purpose:**

- Appropriate levels of professional liability (errors and omissions insurance) ensure that title agencies and settlement companies have the financial capacity to stand behind their professional services. In addition, state law and contractual obligations may require a company to maintain fidelity bond and surety bond policies with prescribed minimum amounts of coverage.

Best Practice 6

▪ **Procedures to meet this best practice:**

- Professional liability or errors and omissions insurance.
 - The company possesses an amount of professional liability insurance from a carrier that is acceptable to the underwriter, given the company's size and complexity and the nature and scope of its operations in an amount not less than agreed to in the company's underwriting agreement(s).

Best Practice 6

▪ **Procedures to meet this best practice:**

- Fidelity coverage.
 - When required by state law or contractual obligations, the company possesses the required amount of fidelity bond coverage, from a carrier that is acceptable to the underwriter in an amount not less than the amount required by state law or agreed to in the company's underwriting agreement(s).

Best Practice 6

▪ **Procedures to meet this best practice:**

- Fidelity coverage.
 - If coverage is not required by state law or contractual obligations, the company possesses an appropriate amount of fidelity bond coverage given the company's size and complexity and the nature and scope of its operations.

Best Practice 6

▪ **Procedures to meet this best practice:**

- Fidelity coverage.
 - Alternatively, the company ensures that Closing Protection Letter coverage, where mandated by statute, is issued in connection with the disbursement or that a statutory indemnity fund is established to cover fidelity losses not otherwise covered by the protections afforded by the underwriter.

Best Practice 6

▪ **ATG Actions**

- ATG maintains a fidelity bond on ATG employees, independent closers, **and ATG agents**.
- ATG has always required agents to carry malpractice insurance.
 - ATG is looking at setting minimum levels.
 - Verification is part of audit process.

Best Practice 7

▪ **Best Practice:**

- Adopt and maintain procedures for resolving consumer complaints.

Best Practice 7

▪ **Purpose:**

- A process for receiving and addressing consumer complaints is important to ensure that any instances of poor service or non-compliance do not go undiscovered.

Best Practice 7

▪ **Procedures to meet this best practice:**

- Consumer complaint intake, documentation, and tracking.
 - Standard procedures for logging and resolving consumer complaints ensure that 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.

Best Practice 7

- **Procedures to meet this best practice:**

- Consumer complaint intake, documentation, and tracking.
 - Standard procedures for logging and resolving consumer complaints ensure that consumers provide the company with sufficient information to understand the nature and scope of the complaint.
 - Establish procedures for forwarding complaints to appropriate personnel.
 - Maintain a log of consumer complaints that includes whether and how the complaint was resolved.

Best Practice 7

- **ATG Actions**

- ATG is developing an agent template and recommended procedures for handling customer complaints.
