

## **TITLE INSURANCE (C) TASK FORCE**

Title insurance (C) Task Force, March 17, 2024, Minutes

## Draft Pending Adoption

Draft: 3/19/24

Title Insurance (C) Task Force  
Phoenix, Arizona  
March 17, 2024

The Title Insurance (C) Task Force met in Phoenix, AZ, March 17, 2024. The following Task Force members participated: Eric Dunning, Chair (NE); Kevin Gaffney, Vice Chair (VT); Lori K. Wing-Heier represented by Sian Ng-Ashcraft (AK); Mark Fowler represented by Erick Wright (AL); Barbara D. Richardson represented by Tom Zuppan (AZ); Karima M. Woods represented by Angela King (DC); Michael Yaworsky represented by Anoush Brangaccio and Joe Hart (FL); Gordon I. Ito represented by Randy Jacobson (HI); Doug Ommen represented by Mathew Cunningham (IA); Dean L. Cameron represented by Shannon Hohl (ID); Amy L. Beard represented by Patrick O'Connor (IN); Vicki Schmidt represented by Craig VanAalst (KS); Timothy J. Temple represented by Chuck Myers (LA); Mike Causey represented by Robert Croom (NC); Scott Kipper represented by David Cassetty (NV); Glen Mulready represented by Erin Wainner (OK); Michael Humphreys represented by Michael McKenney (PA); Michael Wise represented by Will Davis (SC); Larry D. Deiter represented by Tony Dorschner (SD); and Scott A. White represented by Angela Crooker (VA).

### 1. Adopted its 2023 Fall National Meeting and Summer National Meeting Minutes

Commissioner Gaffney made a motion, seconded by McKenney, to adopt the Task Force's Dec. 2, 2023, minutes (see *NAIC Proceedings – Fall 2023, Title Insurance (C) Task Force*) and Aug. 14, 2023, minutes (see *NAIC Proceedings – Summer 2023, Title Insurance (C) Task Force*). The motion passed unanimously.

### 2. Received an Update on the Administration of the Survey of State Insurance Laws Regarding Title Data and Title Matters

Director Dunning stated the *Survey of State Insurance Laws Regarding Title Data and Title Matters* is being administered using Microsoft Forms. An email was first sent to the NAIC General Counsel distribution list Nov. 27, 2023, asking for assistance in coordinating the completion and final submission of the survey. This email was also forwarded to those on the member and interested state insurance regulator Task Force distribution list. Survey responses were due Feb. 1. Several follow-up reminder emails have been sent. However, as of March 14, 2024, 11 states and three territories still need to file. After all filings are submitted, NAIC staff can begin compiling the results for the new publication.

### 3. Heard a Presentation on October Research's 2024 State of the Title Industry Special Report

Erica Meyer (October Research) stated that October Research is dedicated to educating and empowering professionals in real estate transactions to strengthen their businesses and enhance their positions in the marketplace, ensuring the integrity of home ownership. It is the nation's leading independent provider of market intelligence, industry news, expert opinion, and regulatory information for real estate, title, financial, and settlement services professionals. October Research educates professionals through its five business-to-business (B2B) publications, special reports, annual conferences, webinars, a blog, and a podcast.

October Research's 2024 State of the Title Industry Special Report found that home prices have stabilized, and many economists predict mortgage rates to drop in May or June to 6 or 6.5%. This should provide momentum for increased sales in the second half of 2024 and significant sales in 2025. New home starts will be important as U.S. residential single-home inventory is approximately one million homes short. The performance of the commercial real estate arena will be crucial to lenders. There is currently a big push to convert commercial properties into residential properties for affordable housing initiatives. Conversion is complex, and a continual influx of new

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initiatives will be needed to make headway. Inflation is impacting the costs of products designed to protect consumers, especially for cyber and closing costs. There is increased adoption of remote online notarization (RON) by both lending and title communities, but the need for state legislation has slowed the ability to adopt it. Cybersecurity remains a focal point for the industry. Appraisal bias is also a concern the industry is taking steps to address. There is also a lot of regulatory scrutiny surrounding bank and nonbank institutions.

October Research's *Voice of the Title Agent* special report, soon to be released, found title agents' concerns about cyber threats increased by 22%, data and escrow security increased by 13%, and compliance issues increased by 10%. Eighteen percent of agents reported they prevent cybercrime on a daily basis. Cyber and error and omissions (E&O) insurance policy prices and exclusions rose for 52% and 53% of respondents, respectively. No cyber coverage was held by 16% of respondents. Fifty-eight percent of respondents anticipated increased regulatory scrutiny from the Consumer Financial Protection Bureau (CFPB) and state insurance regulators. There is a broadening of scope in the state attorney generals of DC, Maryland, and Pennsylvania and the real estate commissioner of Arizona. States are taking the initiative on actions rather than waiting for the federal government, especially in the area of escrow practices, affiliated business arrangements, and joint ventures. A recent Supreme Court of the United States (SCOTUS) decision on *Tyler v. Hennepin County* has many states looking at their internal policies on affordable housing.

Mary Schuster (October Research) stated many in the title industry report they are navigating the perfect storm of threats in the industry. Revenues remain down, responsibilities have broadened, and expenses have risen. Transaction volumes remain cool due to a combination of low housing inventory and high interest rates. Layoffs throughout the real estate sector remain prevalent. Unregulated noninsurance products are being studied and promoted as equivalent to regulated full insurance products. Most in the industry were surprised when President Joe Biden spoke on these products in his State of the Union Address. These products would overly engage the Federal Insurance Office (FIO). Criteria for using these products allow for cherry-picking, resulting in adverse selection in state-regulated markets. This could create a subprime pool of risks in state-regulated markets. In practice, these programs would not actually assist the traditionally underserved.

Ransomware attacks are on the rise and pose a risk to the system. In the fourth quarter of 2023, two of the largest title underwriters underwent ransomware attacks that slowed installed markets for weeks. The ripple effects impacted most of the ecosystem, with appraisals unable to be issued, lenders unwilling to accept emails with attachments, and delays in closing. Data ownership concerns are on the rise. Some technology providers have terms and conditions that transfer data ownership out of the insured hands and into their hands. Artificial Intelligence (AI) is another concern, as the dataset that the algorithms are trained on is needed to audit their decisions. Both new and old forms of fraud are on the rise. This includes contracts for deeds, vacant lots, impersonations, spoofing, and wire fraud. Many small agents who are the providers in secondary markets where larger players do not provide services report they will have to shut their doors if a normal spring and summer does not appear soon. Specialization comes from years of experience, so recruiting and training are challenging in times of low unemployment. Many owners have sold their agencies, resulting in market consolidation. Defalcation risk is on the rise as companies have a harder time sustaining operations.

October Research's coverage also keeps pace with national and state-specific macro issues. It reported live from SCOTUS twice recently with respect to the Chevron deference. In *Chevron*, SCOTUS held that where a statute is ambiguous (either in the language itself or the omission of language), the U.S. Congress (Congress) intended to delegate to the relevant agency the authority to fill the identified statutory gaps. A SCOTUS ruling due this summer could drastically change how much business is done, the definition of interest rate, and what is presented to consumers in a closing statement. October Research also follows the Payday Lending case, which determines the legality of the funding mechanism for the CFPB itself and, therefore, every rule they have ever published. In the area of compliance, it reports regularly on activities involving the federal Real Estate Settlement Procedures Act (RESPA), foreign ownership of land, and Multiple Listing Service (MLS) and commissions. Related to state

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regulation, October Research maintains reference resource centers that allow readers to track state-by-state changes to things such as RON laws.

Meyer stated October Research would love to work with state insurance regulators on editorial content for the industry. It allows contributors to read the content before it is published. It is also happy to house any reference materials for the industry on its website and feature state insurance regulators on its podcast or webinars. It is hosting a National Settlement Services (NS3) Conference May 21–23. The NS3 includes a regulator panel in which 10 states have participated over the years. Participants include state insurance regulators, attorney generals, consumer protection divisions, the Federal Trade Commission (FTC), the Secret Service, Fannie Mae, and the CFPB.

Myers stated that October Research’s publications gave him the needed title education while at the Virginia Bureau of Insurance. The Louisiana Department of Insurance (DOI), where he currently serves, receives these publications digitally. Myers said October Research has high integrity and will keep anything a state insurance regulator discusses confidential, if needed, and represents regulators well in its publications. He said that he participates on the NS3 regulator panel and finds it provides a way for the industry to see its regulators as accessible. Myers said the panel also provides a good way for state insurance regulators to see what is happening with their agents and underwriters. He encouraged other state insurance regulators to participate in or attend the NS3 Conference.

#### 4. Heard a Presentation on the Recent Proposed Rule from the Treasury Department’s FinCEN on Money Laundering and Residential Real Estate

Steve Gottheim (American Land Title Association—ALTA) stated that ALTA was concerned with President Biden’s comments on the title industry in his State of the Union Address. The proposals from the State of the Union Address included three issues of concern. The first is a pilot program that would essentially make Fannie Mae a title insurer. Under this proposal, Fannie Mae would test an algorithmic engine where refinance loans with a low-risk score would pay Fannie Mae \$355 instead of purchasing a lender’s policy. The money paid to Fannie Mae would then be used if an unforeseen title risk arose in the future. The second is a proposal for the CFPB to examine closing costs and if they can be lowered by scrutinizing junk fees. The FIO is expected to discuss this topic. The third relates to its proposed rule of money laundering.

In February 2024, the U.S. Department of the Treasury’s (Treasury Department’s) Financial Crimes Enforcement Network (FinCEN) issued a notice of proposed rulemaking that would require certain people involved in real estate closings and settlements to report information to the agency about all-cash residential transactions nationwide involving legal entities and trusts. Comments on the proposed rule are due April 16, 2024. FinCEN has proposed the rule go into effect one year after the final rule is issued. This is a complex data collection effort for title companies. It includes a lot of data not currently collected by title companies because they do not need it for their purposes. It will be one of the largest and most expensive regulatory changes for the title industry in the last two decades. This will factor into the rates title insurers file with state insurance regulators. FinCEN plans to introduce a proposal for commercial real estate transactions toward the end of 2024.

FinCEN’s role is to collect financial intelligence data to distribute throughout the financial ecosystem. Real estate has been consistently indicated as a risk in the National Money Laundering Assessment since at least 2015. Customer due diligence for real estate has been part of Financial Action Task Force (FATF) recommendations since 2012. Anticorruption group Global Financial Integrity (GFI) estimated, “at a minimum, \$2.3 billion was laundered through the real estate sector in the U.S.” between 2015 and 2020. In 2016, FinCEN began identifying money laundering schemes through targeted data collection and reporting efforts under Geographic Targeting Orders (GTOs). The GTOs require U.S. title insurance companies to identify the natural persons behind shell companies

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used in non-financed residential real estate purchases. GTOs cover 69 counties and have proved highly valuable to FinCEN, with 40% of GTO reports correlating to bank Suspicious Activity Reports (SAR).

The FinCEN proposed rule covers all cash purchases of residential real estate where the buyer is a legal entity or trust. About 30% of real estate purchases are all cash; of those, about 15% are suspicious. The proposed rule would require the reporting of basic transaction information (closing date, purchase prices, parties' names, etc.), beneficial ownership information (focused on the buyer), and payment information. The proposed rule allows reporting persons to collect information from the transferee if they get a written certification. Generally, the settlement agent is required to report 30 days after closing, with guidelines if there is no settlement agent. Agent applies to attorneys the same as non-attorneys. The proposed rule includes sales anywhere in the U.S. (50 states), DC, Puerto Rico, overseas territories, and American Indian lands. The value of the data collected nationwide is not likely to be as effective as the data collected more narrowly under the GTOs. Additionally, there is a five-year recordkeeping requirement. This means the proposed rule would bring much more expense to the title industry for potentially much less effective data.

Title insurers use an owner's policy and a loan policy for residential and commercial real estate transactions. They do not need to know if it is residential or commercial for their underwriting. This means the title industry will need to change its processes to gain the information needed to report under the proposed rule.

FinCEN estimates the costs in the first year to be \$267.3–\$476.2 million, with 75 minutes for initial training per staff person. Each subsequent year is estimated to cost \$245–\$453.9 million. This equates to the reporting of each transaction costing the industry \$500. The estimates do not account for the costs of technological changes and educating the real estate ecosystem on the proposed rule. Questions for state insurance regulators to consider include: 1) how title agents will obtain this data if not much of it is already collected; 2) how the additional costs will flow into the title industry's overall expenses; 3) how this will impact data collected through data calls; and 4) how examinations on this rule will work.

Gaffney asked how, with regard to underwriters not needing to know if it is residential or commercial, this would apply when flood insurance is involved. Gottheim stated that it is the lender that requires flood insurance, and in that case, the mortgage aspect of it would inform the insurer. However, the proposed rule applies when there is no mortgage.

Jacobson asked if cryptocurrencies are considered "cash" under the proposed rule. Gottheim stated that the form of payment does not matter, only that there is no mortgage.

McKenney stated that he appreciated the impact of the cost to the title industry. He asked if the consumer benefit was estimated to offset this additional cost. Gottheim stated no benefit analysis has been done.

Having no further business, the Title Insurance (C) Task Force adjourned.

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