

Draft date: 2/21/24

2024 Spring National Meeting  
Phoenix, Arizona

**TITLE INSURANCE (C) TASK FORCE**

Sunday, March 17, 2024

3:30 – 5:00 p.m.

Phoenix Convention Center—101 West—Level 1

**ROLL CALL**

Eric Dunning, Chair	Nebraska	Kathleen A. Birrane	Maryland
Kevin Gaffney, Vice Chair	Vermont	Grace Arnold	Minnesota
Mark Fowler	Alabama	Scott Kipper	Nevada
Lori K. Wing-Heier	Alaska	Alice T. Kane	New Mexico
Barbara D. Richardson	Arizona	Mike Causey	North Carolina
Karima M. Woods	District of Columbia	Jon Godfread	North Dakota
Michael Yaworsky	Florida	Judith L. French	Ohio
Gordon I. Ito	Hawaii	Glen Mulready	Oklahoma
Dean Cameron	Idaho	Michael Humphreys	Pennsylvania
Amy L. Beard	Indiana	Elizabeth Kelleher Dwyer	Rhode Island
Doug Ommen	Iowa	Michael Wise	South Carolina
Vicki Schmidt	Kansas	Larry D. Deiter	South Dakota
Timothy J. Temple	Louisiana	Scott A. White	Virginia

NAIC Support Staff: Anne Obersteadt/Aaron Brandenburg

**AGENDA**

1. Consider Adoption of its 2023 Summer National Meeting Minutes and Fall National Meeting Minutes—*Director Eric Dunning (NE)* Attachments 1-2
2. Receive an Update on the *Survey of State Insurance Laws Regarding Title Data and Title Matters—Director Eric Dunning (NE)*
3. Hear a Presentation on October Research’s 2024 State of the Title Industry Special Report—*Erica Meyer (October Research) and Mary Schuster (October Research)* Attachments 3-5
4. Hear a Presentation on the Recent Proposed Rule From the U.S. Department of the Treasury’s (Treasury Department’s) Financial Crimes Enforcement Network on Money Laundering and Residential Real Estate —*Steve Gottheim (American Land Title Association—ALTA)* Attachment 6

**Draft Pending Adoption**

Draft: 8/18/23

Title Insurance (C) Task Force  
Seattle, Washington  
August 14, 2023

The Title Insurance (C) Task Force met in Seattle, WA, Aug. 14, 2023. The following Task Force members participated: Eric Dunning, Chair (NE); Kevin Gaffney, Vice Chair (VT); Mark Fowler represented by Erick Wright (AL); Karima M. Woods represented by Angela King (DC); Michael Yaworsky represented by Anoush Brangaccio, Jeffrey Joseph, and Bradley Trim (FL); Vicki Schmidt represented by Julie Holmes (KS); James J. Donelon represented by Chuck Myers (LA); Kathleen A. Birrane represented by Mary Kwei (MD); Grace Arnold represented by Paul Hanson (MN); Troy Downing (MT); Mike Causey represented by Tracy Biehn (NC); Judith L. French represented by Tom Botsko and Maureen Motter (OH); Glen Mulready represented by Erin Wainner and Diane Carter (OK); Michael Humphreys represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Patrick Smock (RI); Michael Wise represented by Will Davis and Rachel Moore (SC); and Larry D. Deiter represented by Tony Dorschner (SD).

1. Adopted its Spring National Meeting Minutes

Commissioner Gaffney made a motion, seconded by Botsko, to adopt the Task Force's March 23 minutes (see *NAIC Proceedings – Summer 2023, Title Insurance (C) Task Force*). The motion passed unanimously.

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

Director Dunning stated that after investigating various survey administrative tools, NAIC staff have decided that using Microsoft Forms for the survey questions would make the most sense. The survey is anticipated to be administered to states shortly following the Summer National Meeting.

3. Heard an Update on the Compiling of Consumer Complaint Data Related to the Title Industry

Myers stated that the Task Force is charged this year with “obtaining information on consumer complaints submitted to states regarding title insurance to determine if updates are needed to insurance regulatory best practices or standards.” He leads the subsequently formed drafting group. Other drafting members include Montana; Nebraska; Ohio; Pennsylvania; Rhode Island; Washington, DC.

A draft survey of questions to send to states to collect title-related complaint information was drafted. The survey was not sent to states, as the drafting group became aware of the NAIC Complaints Database System (CDS) maintained by the NAIC's Market Regulation Department. NAIC staff were then directed to obtain the title-related complaint data from the CDS and compile it for analysis. Myers and NAIC staff then met with NAIC Market Regulation staff to better understand the submission process and how data is captured in the CDS. Additionally, Myers investigated how the Louisiana Department of Insurance (DOI) tracks and reports title-related complaints.

The drafting group met May 22 to review the draft survey of questions and four years of title complaint information compiled from the NAIC CDS. The drafting group found that more than 50% of complaint reasons were coded as “state-specific” for each year. Complaint dispositions can also be coded as “state-specific.” As this does not provide much information for analysis, NAIC staff were instructed to reach out to states reporting a significant number of complaint dispositions and reasons as “state-specific” for additional detail. Requests for additional information were sent to California, Florida, Missouri, and Texas.

## Draft Pending Adoption

California responded that all of its “state-specific” coded reasons for complaints were for escrow handling. Florida responded that more than half of its reasons for complaints came from agent handling, failure to disburse funds, and premium refunds. Texas reported that over half of its “state-specific” reasons were for closing, contract disputes, and earnest money. Texas also reported that over half of its “state-specific” dispositions were for contract language, information furnished, and questions of fact. Missouri declined to provide information citing the task as being too laborious.

The drafting group plans to meet again following the Summer National Meeting to discuss if additional detail is needed to identify trends. As part of its discussions, it will contemplate how reporting to the NAIC CDS could be enhanced to allow for more transparency on title-related complaints. Currently, title is captured under the CDS’s miscellaneous category, which does not offer the same coding options as those that have their own category.

### 4. Heard a Presentation on Issues with NTRAPS

Sylvia Smith-Turk (Stewart Title) stated that Non-Title Recorded Agreements for Personal Services (NTRAPS) are agreements that obligate the current owner to use the other party’s services in the future and further attempt to bind successor owners by purporting to create a real property interest. Failure to comply with these agreements may give rise to a lien against the property to secure liquidated damages. How these agreements are marketed to property owners and the terms, duration, and enforcement of these agreements are concerning. There are no regulatory disclosure requirements regarding these agreements. Consumers may not fully understand the implications of these agreements. The act of recording NTRAPS in property records can create a long-term barrier to the sale or refinancing of real estate or hamper estate administration. The practice of submitting NTRAPS for inclusion in property records characterized as liens, covenants, encumbrances, or security interests in exchange for money recently emerged throughout the country.

Smith-Turk stated that these agreements are harmful to consumers because they obligate current and future property owners to utilize the service providers for up to 40 years. Consumers do not have the expertise of real estate professionals or attorneys. They may not have the benefit of legal counsel and may not fully understand the agreement or the long-term implications of the ability to transfer or finance their property. Elderly homeowners or those in need of the financial incentives being offered are particularly at risk, and NTRAPS can result in a significant monetary loss when transferring or financing their home. Additionally, NTRAPS provisions allow the listing agreement to be assigned without notice to the property owner.

The American Land Title Association (ALTA) supports efforts to protect consumers by prohibiting the filing of unfair real estate fee agreements in property records, a practice that creates impediments and increases the cost and complexity of selling, refinancing, or transferring real estate. ALTA advocates for state laws and regulations preventing the enforcement of NTRAPS. ALTA’s model legislative bill: 1) makes agreements unenforceable; 2) prohibits the recording of these agreements in property records; 3) creates penalties for recording these agreements in property records; and 4) provides for the recovery of damages and the removal of agreements from property records. The proposed legislation protects consumers and provides state insurance regulators with the ability and authority to assist consumers in seeking damages caused by NTRAPS. There have been over 30 bills introduced in 21 states and 15 laws passed. Attorneys General from Florida, Massachusetts, New Jersey, North Carolina, Ohio, and Pennsylvania have filed complaints stating that NTRAPS being used in the marketplace are deceptive, unfair, and unconscionable business practices.

### 5. Heard a Presentation on Current Fraud Trends in the Title Space, Including Seller Impersonation Fraud

Thomas Cronkright (CertifID) stated that business email compromise (BEC) losses have increased four-fold over the past five years. BEC is a scam targeting businesses and individuals performing wire transfers of funds. Legitimate email accounts are compromised through social engineering and computer intrusion to conduct

## Draft Pending Adoption

unauthorized wire transfers. Cryptocurrency has enabled accelerated funds movement, and compromises have evolved to include spoofed phone calls, videos, and websites. Open source of information, Multiple Listing Service (MLS) data syndication, and multiple transactional parties make real estate a top target. The pandemic led to rapid growth in digital closings without creating a safety net. Emerging technologies and expanded personal digital footprints create a growing divide between businesses that protect their customers and those that do not. Vulnerable businesses are reliant on the belief in trusted communications, focus on the manual detection of suspicious behavior, and believe they are too small to be a target. Protected businesses verify identities before sharing sensitive information, leverage technology to inspect every case thoroughly, and recognize that everyone is a target.

New technologies have led to advanced social engineering. SpoofCard is an application that offers users the ability to change what someone else sees on their caller ID display when they receive a phone call. A current practice in the industry to confirm identity has been to call someone and reach them live over the phone, which is known as the “call-back” procedure. Some errors and omissions insurance policies even require a call back before funds are initiated, or coverage may be denied if a loss occurs. The challenge is, you often cannot get a hold of someone in real-time, so they need to call you back. As an example, a hacker could spoof a title company and call the buyer when it is time to wire funds to close. Likewise, a fraudster could impersonate a seller and call the title company and provide them fraudulent wiring information for net proceeds to be transferred after closing.

Deepfakes—artificial intelligence (AI) voice replication—can impersonate real estate professionals to gain access to sensitive information about clients and defraud them. All it requires is a short voice sample of the human voice you want to replicate for the AI to learn it instantly. Fake AI-generated property tours online could deceive buyers and agents about property conditions. Influence Bots—open-source intelligence—use social media to influence users of social platforms. SIM swap—SS7 Network—is a type of account takeover fraud that generally targets a weakness in two-factor authentication and two-step verification, in which the second factor or step is a text message (SMS) or a call placed to a mobile telephone. AI-generated attack emails use ChatGPT AI text-generating interfaces to create malicious messages designed to spear phish, scam, harass, and spread fake news. These AI-based systems can also be used for BEC scams.

Seller impersonation fraud is a new type of scam hitting the real estate industry due to fewer opportunities for other fraud techniques from a decline in home sales. Fraudsters are impersonating an owner to sell unoccupied property, including vacant lots, they do not own. A fraudster will identify vacant lots using public records. Posing as the seller, the scammer contacts a real estate agent to list the property for below market value. The scammer quickly accepts the offer, with a preference for cash sales and then requests a remote notary signing and impersonates the notary. The funds are transferred to the scammer and not discovered until later. Florida and Texas have the highest percentage of vacant land sales as a percentage of total sales. The U.S. Secret Service and CertifID issued a joint bulletin recently advising of the rise in vacant land fraud.

Fraud attempts on mortgage payoffs increased by five times in the second quarter versus the prior three months. Payoff fraud is when fraudsters impersonate a lender or another title company to receive the funds from disbursement after the settlement process, either from refinancing or the sale of a property. Fraudsters use common tactics found in other wire fraud scams to send a falsified payoff statement with wiring instructions to the targeted settlement agent. Shifts in deposit relations stemming from the three high-profile bank failures opened the door for fraudsters.

The CertifID Fraud Recovery Services (FRS) team received an unprecedented number of reports of wire fraud in 2022. Cases increased by 145% year-over-year, with a \$158,000 average loss reported per case. Average wire fraud loss for businesses and consumer cases were \$295,000 and \$107,000, respectively. A layered protection process of education and engagement, technology, insurance coverage, and incidence response planning are needed to mitigate the impact.

## **Draft Pending Adoption**

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

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/2023/TITLE/08-TitleTF.docx

## Draft Pending Adoption

Draft: 12/7/23

Title Insurance (C) Task Force  
Orlando, Florida  
December 2, 2023

The Title Insurance (C) Task Force met in Orlando, FL, Dec. 2, 2023. The following Task Force members participated: Eric Dunning, Chair (NE); Kevin Gaffney, Vice Chair (VT); Michael Yaworsky represented by Anoush Brangaccio (FL); Doug Ommen represented by Mathew Cunningham (IA); Vicki Schmidt represented by Craig VanAalst (KS); James J. Donelon represented by Chuck Myers (LA); Kathleen A. Birrane represented by Mary Kwei (MD); Mike Causey represented by Robert Croom (NC); Glen Mulready represented by Diane Carter (OK); Michael Humphreys represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Patrick Smock (RI); Michael Wise represented by Melissa Manning (SC); Larry D. Deiter represented by Tony Dorschner (SD); and Scott A. White represented by Richard Tozer (VA). Also participating were: George Bradner (CT); Patrick O'Connor (IN); Christian Citarella (NH); and Scott Kipper (NV).

### 1. Adopted its Oct. 20 Meeting Minutes

The Task Force conducted an e-vote that concluded Oct. 20 to adopt its 2024 proposed charges.

Commissioner Gaffney made a motion, seconded by Brangaccio, to adopt the Task Force's Oct. 20 minutes (Attachment One) The motion passed unanimously.

### 2. Heard 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 sent to the NAIC General Counsel distribution list Nov. 27, 2023, asking for its assistance in coordinating the completion and final submission of the *Survey of State Insurance Laws Regarding Title Data and Title Matters* questionnaire. This email was also forwarded to those on the Task Force's member and interested regulator distribution list Nov. 29, 2023.

The email requests responses from all parties involved in filling out the questionnaire to be coordinated, compiled, and submitted by one person designated by the Department so that one response is received from each jurisdiction. A link to the questionnaire in Microsoft Forms was included. Questions added since the last survey update in 2018 are in blue font. Questionnaire responses are requested to be completed by Dec. 22, 2023.

### 3. Heard a Presentation on AM Best's Market Segment Outlook: U.S. Title Insurance

Kourtne Beckwith (AM Best) stated that AM Best rates six title insurance companies, including three of the 'Big 4'. It collects data from more than 30 companies and publishes the *Market Segment Report: U.S. Title Insurance Report* in the fourth quarter annually. It publishes the *Market Segment Outlook: U.S. Title Insurance Report* in the first quarter annually. The current outlook is negative for the title insurance sector. Key drivers for the negative outlook include: 1) a significant decline in home sales and refinancing activity; 2) continued economic slowdown; 3) an expected rise in unemployment; 4) continued monetary tightening and high prevailing mortgage interest rates; and 5) potential recessionary pressures.

Beckwith stated title companies experienced pressure during the housing crisis in 2008–2009. Defalcation was higher during this period. Underwriting guidelines tightened following this period, and the sector experienced recording breaking financial results in 2020 and 2022. Refinance transactions began to slow in 2022. The 2023

## Draft Pending Adoption

Market Segment Report found that despite this and lower financial indicators in 2023, the title sector still produced solid operating results. However, operating margins were compressed, and premium volume was lower. The sector had an average combined ratio of 90.8 over the past five years and 92.0 over the past 10 years. The aggregate expense ratio has remained below 90.0 since 2012.

Major themes impacting the operating performance of AM Best's rated title insurance companies from 2022 through the second half of 2023 include: 1) the Federal Reserve lifting interest rates beginning March 2022; 2) macroeconomic headwinds for the housing industry led to a 40% drop in title premium in the first half of 2023; 3) current homeowners are locked into lower rates leading to a 51% decrease in refinance activity in the second quarter of 2023 over 2022; and 4) increased title acquisitions of appraisals, other title companies, and online brokers. The title marketplace was dominated by the Big 4 (Fidelity National, First American, Old Republican, and Stewart), accounting for 86% of the market's direct written premium in 2022. Smaller companies made inroads to diversifying the title market through 2021. There is a regional carrier preference by customers.

Title insurance operations are cyclical. However, current trends are not comparable to the 2008 financial crisis. Title companies are expected to remain profitable despite the expectation of higher mortgage interest rates and decreased affordability into 2024.

#### 4. Heard a Presentation on the Impact of Current Mortgage Rates, Operating Expenses, and Housing Market Cyclicity on the Title Industry

Mark Fleming (First American Financial Corporation) stated the title industry is highly cyclical and correlated to the housing market, and the housing market is highly cyclical and correlated to mortgage rates. The federal funds rate and market uncertainty have pushed mortgage rates up and increased their spread against long-term treasury rates. However, mortgage rates over the last 10 years have been unusually low compared to years prior. As a result, 66% of all households have a mortgage rate of 6% or less. The current higher-rate environment provides little incentive for these households to refinance or sell their current home and purchase another. As 90% of all home sales are from existing homeowners, this means there is little supply or demand in the housing market. The lack of housing stock inventory also provides few enticing purchase options for home buyers, discouraging them from entering the market. The U.S. also has a housing shortage from not building enough homes over the past 10–20 years. This housing shortage is the reason housing prices continue to rise despite higher mortgage rates. Housing affordability is being impacted by the mortgage dollar not going as far and increasing home prices due to short supply. Additionally, while inflation provides equity for existing homeowners, it creates affordability issues for first-time home buyers. Homebuilders are not expected to double or triple the number of homes they build and bring to market soon. However, the housing market is not expected to deteriorate further. The Federal Reserve is not expected to increase interest rates further, and housing market growth is expected to return next year.

The housing market is intertwined with the title industry. Higher loan amounts benefit the title industry through higher policy premiums. However, this is not enough to offset the lower volume of policies being issued because of fewer home sales and refinancing. Title insurers collect premiums only at policy issuance. Thus, they bear duration risk. Slower mortgage prepayment speeds increase title insurance policy duration. Policy demand is driven by the housing and mortgage market cycles. Serious delinquency and foreclosure increase the risk of title claims and losses. Risk can be insured or, because title insurance uniquely insures against past events, cured to achieve marketable title. Title insurers' losses are lower than those of insurers from other lines of business, but the addition of curative costs increases operating expenses.

Losses can typically be traced back to serious delinquency and foreclosure rates in the market. It is important to note that title insurer losses incurred today are not related to the premium the insurer is writing today. Current losses are funded from statutory reserves for losses set up at the time the premium is collected from the issued

## Draft Pending Adoption

policy. Title insurers are in a unique position of insuring past events and thus have the choice to curate this. Current statistics are unlikely to show the actual stress on homeowners and mortgage holders today because of all the forbearance programs.

Title insurers' premium and expense ratios have slightly increased in the first half of 2023 due to reduced home sales volume. Unlike in other countries, a deed is not evidence of ownership. Expense ratios reflect the costs of curative work to determine whether a title is marketable and free from liens and forgery (i.e., not in public records). On average, at least one requirement on a title commitment is found 60% of the time. It is important to separate the costs of title settlement and title insurance. Settlement is a service to file the records and process the paperwork. Using Federal National Mortgage Association (Fannie Mae) data, the insurance product itself is only, on average, .42% of the lifetime costs of the mortgage. Unlike home insurance, title insurance is charged once, not monthly.

Gaffney asked how public records encumbering real estate, particularly liens and judgments, have fluctuated over the past five years with housing pressures and mortgage balances. He also asked about the trend of mortgage balances for new transactions. Additionally, Gaffney asked for the source of the number of curative transactions in the presentation. Fleming stated mortgage values have moved in lockstep with the average values of homes. When interest rates were low, principal values increased because homeowners could borrow more. For new transactions, the average house price is in the mid \$300,000 range, and the average down payment is 14%, leaving a mortgage amount of \$307,000. First-time home buyers average a down payment of only 8%. The analysis on curative transactions used transactions First American Financial Corporation has been an examiner on year-to-date.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/2023/TITLE/12-TitleTF.docx



Draft: 10/25/23

Title Insurance (C) Task Force  
E-Vote  
October 20, 2023

The Title Insurance (C) Task Force conducted an e-vote that concluded Oct. 20, 2023. The following Task Force members participated: Eric Dunning, Chair (NE); Kevin Gaffney, Vice Chair (VT); Mark Fowler represented by Erick Wright (AL); Karima M. Woods represented by Angela King (DC); Michael Yaworsky represented by Jeffrey Joseph and Christina Huff (FL); Vicki Schmidt represented by Julie Holmes (KS); James J. Donelon represented by Chuck Myers (LA); Kathleen A. Birrane (MD); Grace Arnold represented by Jacqueline Olson (MN); Troy Downing represented by Sharon Richetti (MT); Mike Causey represented by Fred Fuller (NC); Glen Mulready represented by Erin Wainner (OK); Michael Humphreys represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Patrick Smock (RI); Michael Wise represented by Will Davis (SC); and Scott A. White represented by Richard Tozer (VA).

1. Adopted its 2024 Proposed Charges

The Task Force conducted an e-vote to consider adoption of its 2024 proposed charges (*see NAIC Proceedings – Fall 2023, Executive (EX) Committee and Plenary*). The motion passed unanimously.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/Fall 2023/TITLE/E-Vote/10-TitleTF.docx



October Research, LLC

# October Research, LLC

Mary Schuster, Chief Knowledge Officer

Erica Meyer, CEO & Publisher

# Agenda

- October Research Overview
- 2024 Outlook
- A Day in the Life of the Title Industry
- How October Research Can Help Support You

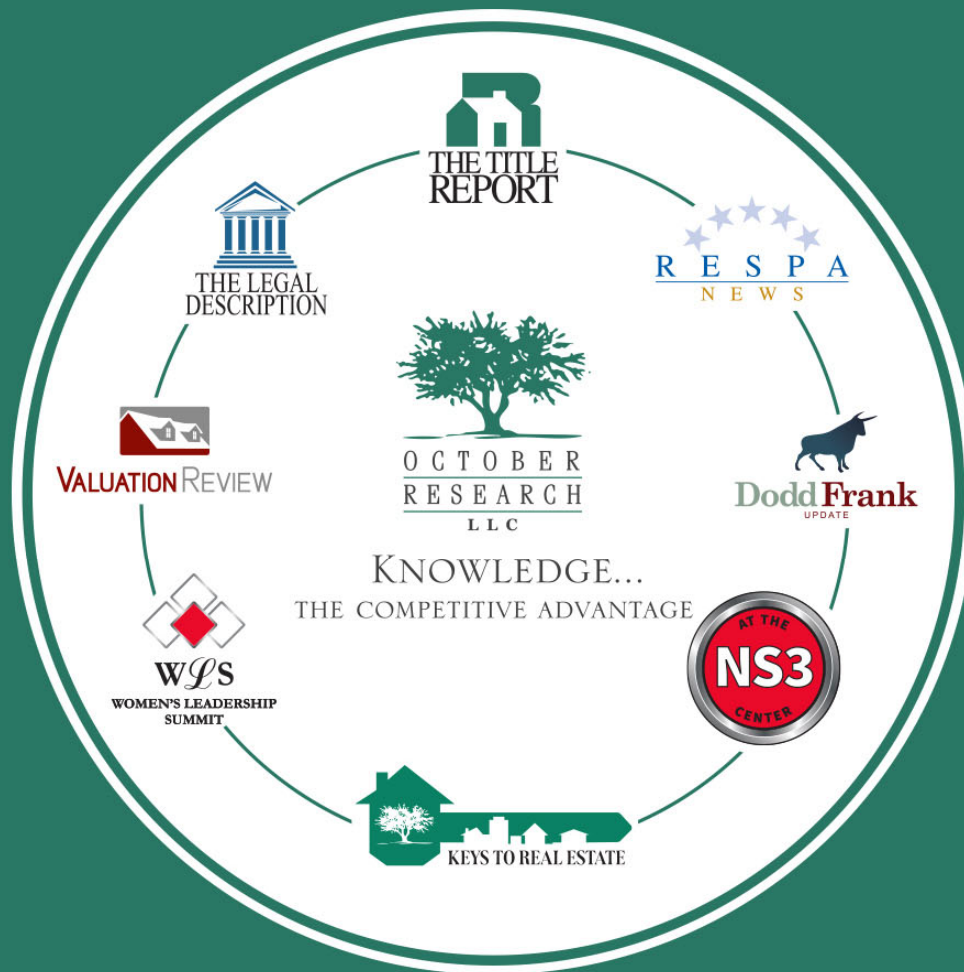
# October Research Overview

# October Research Overview

- **Mission:** October Research, LLC is dedicated to educating and empowering professionals in the real estate transaction to strengthen their business and enhance their position in the marketplace, ensuring the integrity of home ownership.
- **October Research, LLC** is the nation's leading independent provider of market intelligence, industry news, expert opinion and regulatory information for professionals in the real estate, title, financial and settlement services industries.

# October Research Overview

- Differentiators
  - Servicing the industry for 25 years
  - Knowledge...The Competitive Advantage
  - Independent Perspective
  - Integrity
  - Deep Dive Into Each Component of the Real Estate Transaction
- Publications
- Webinars
- Events
- Podcast – Coming Soon!



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# 2024 Outlook



# 2024 Outlook

- Economic Forecast
  - Mortgage Rates Drop in 2024 (May/June)
    - 15-20% Increase in Sales Q3&4
  - 2025 Significant Increase in Sales
  - Limited SFR Inventory
  - New Home Construction
  - Commercial Real Estate → Lenders
    - Converting Commercial to Residential for Affordable Housing
    - Willing to try once...
  - Home prices have stabilized

# 2024 Outlook

- State of the Industry
  - Inflation vs
    - Increasing Expense of Protecting the Consumer – cyber and closing costs
    - Remote Online Notarization (RON) Legislation
  - Cost of Insurance – Flood, Home, E&O and Cyber
  - Cybersecurity – It's When, Not If
  - Affordable Housing
  - Appraisal Bias
  - Bank or Nonbank

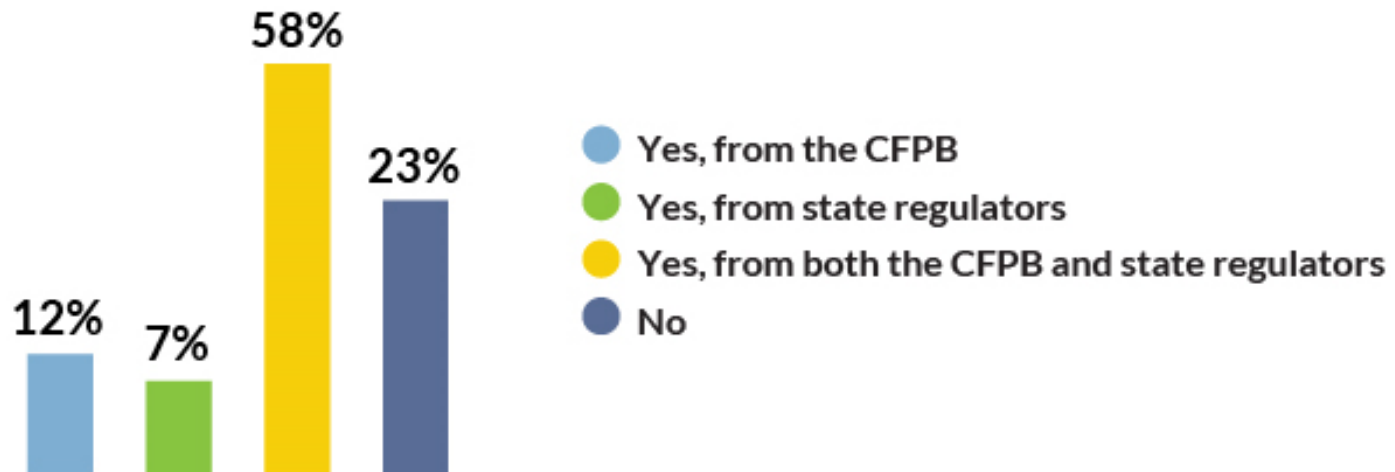
# 2024 Outlook

- Voice of the Title Agent – *Coming Soon!*
  - Top Concerns:
    - Cyberthreats (+22% YOY)
    - Data/Escrow Security (+13% YOY)
    - Compliance Issues (+10% YOY)
  - 18% of Agents Prevent a Cybercrime on a Daily Basis ( 21+/month)
  - Experienced Significant Price Increases & More Exclusions Past 12 Months:
    - 52% Cyber Insurance Policies
      - 16% Don't Have a Policy
    - 53% E&O Insurance Policies

# 2024 Outlook

- Voice of the Title Agent – *Coming Soon!*

**Do you think there will be increased regulatory scrutiny  
from state or federal regulators?**

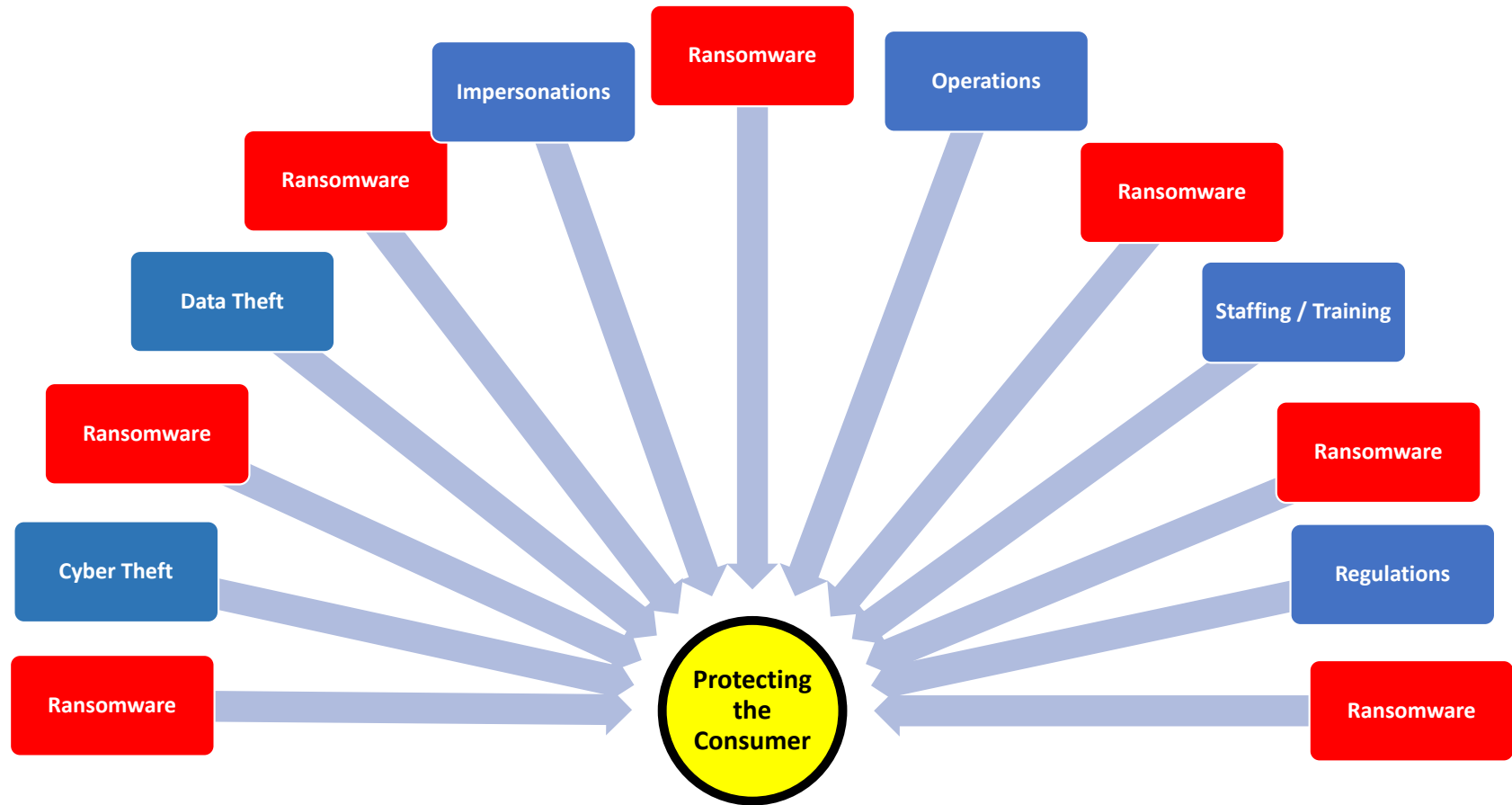


# 2024 Outlook

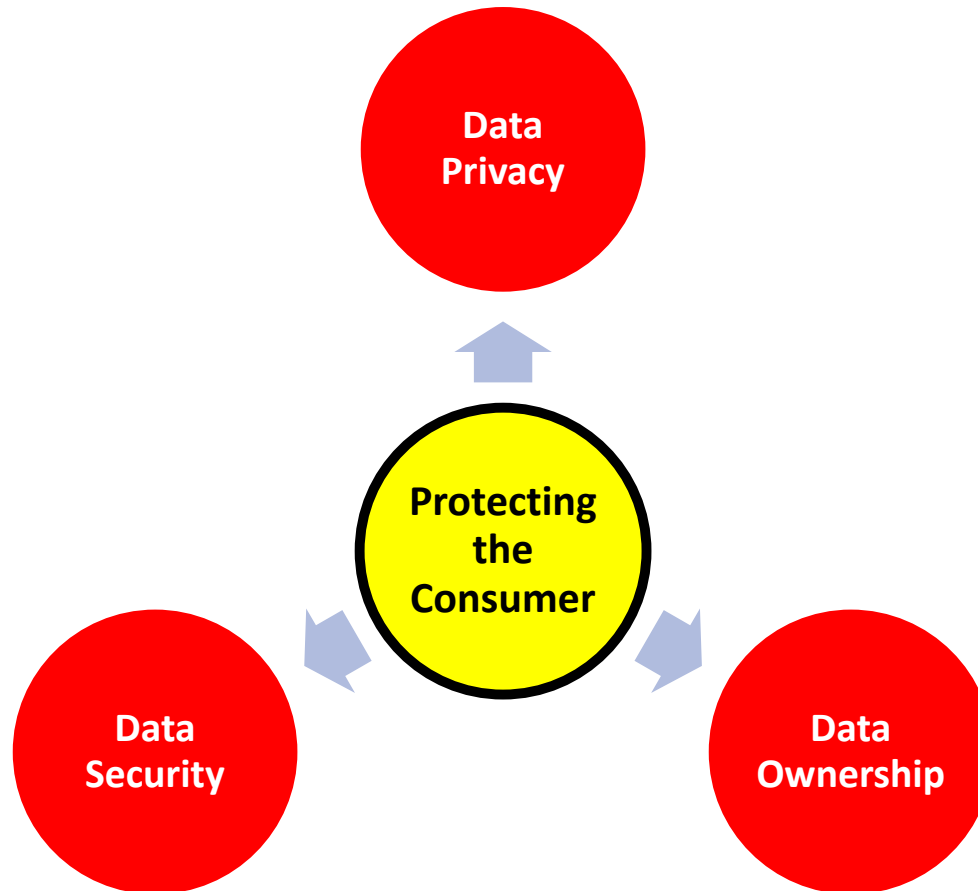
- Regulatory Actions at the State Level
  - Broadening Scope and Overlap of Regulatory Bodies
    - State Attorneys General – DC, PA, MD
    - Real Estate Commissioner - AZ
  - States are Taking Initiative on Actions, Rather Than Waiting on Federal Agencies
    - Escrow
    - Affiliated Business Arrangements (AfBAs) and Joint Ventures (JVs)
    - Affordable Housing → Tyler v. Hennepin County
  - Industry is Requesting Meaningful Interactions to Explore Opportunities Together

# A Day in the Life of the Title Industry

# A Day in the Life of the Title Industry

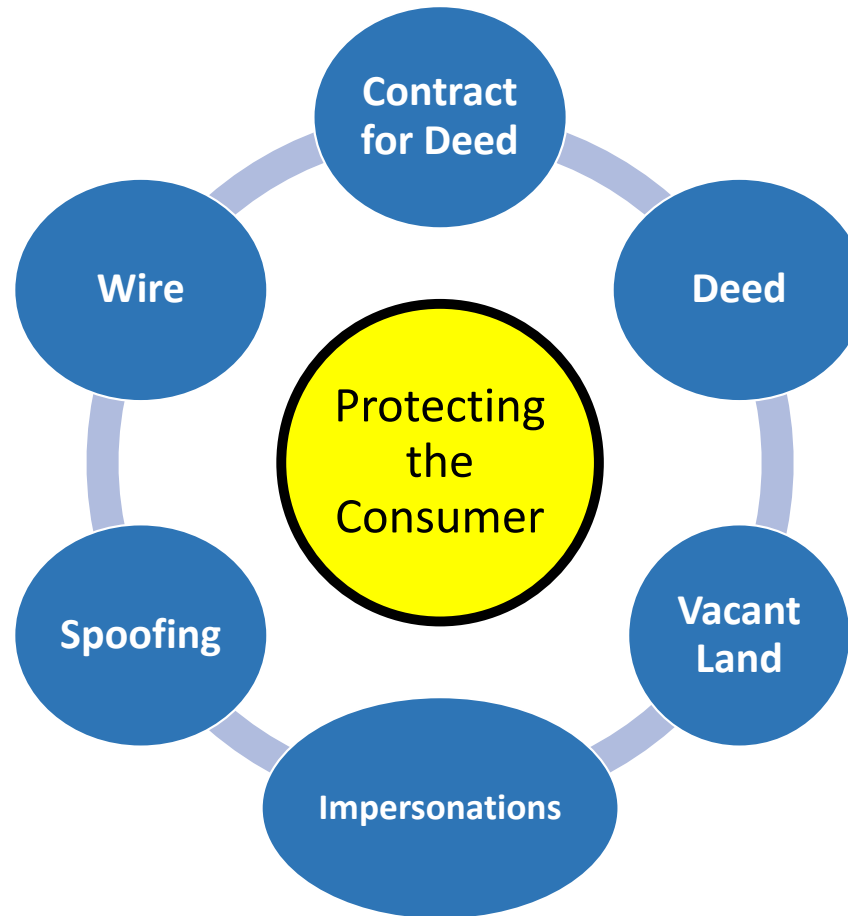


# A Day in the Life of the Title Industry – Data

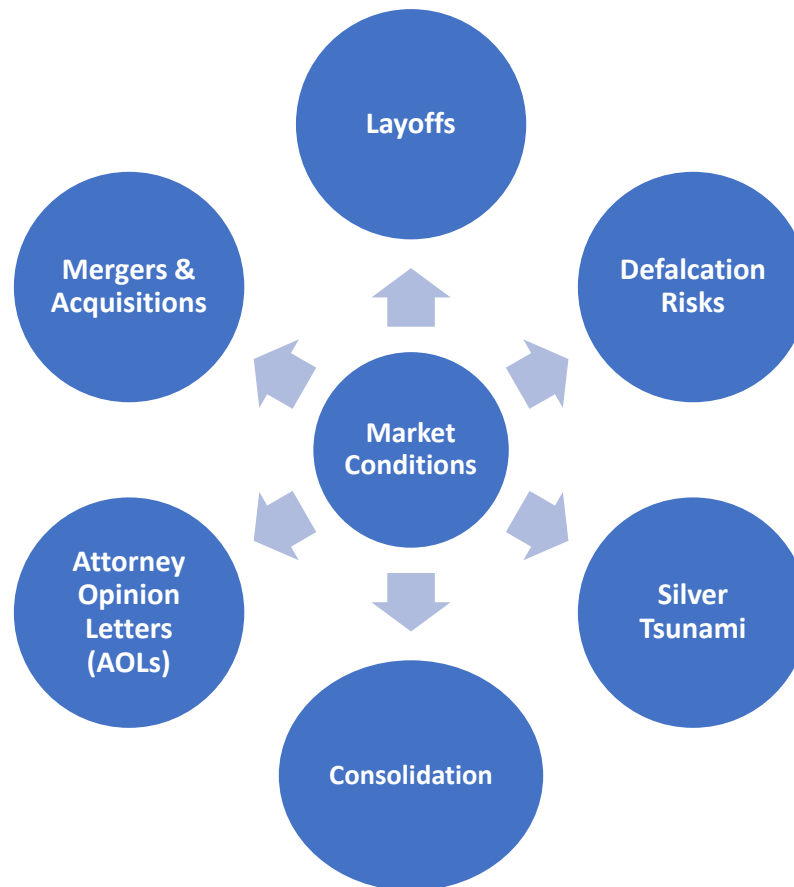




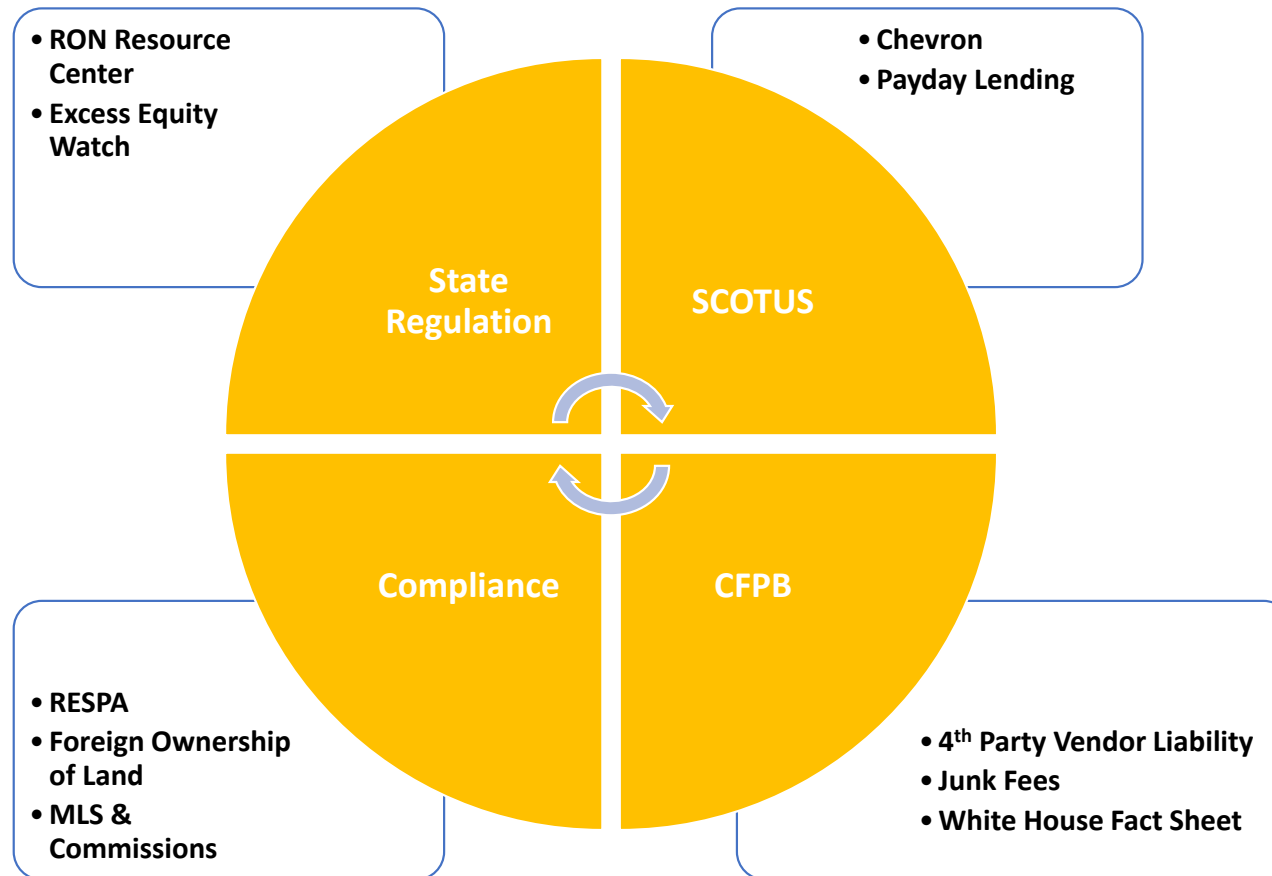
# A Day in the Life of the Title Industry – Fraud



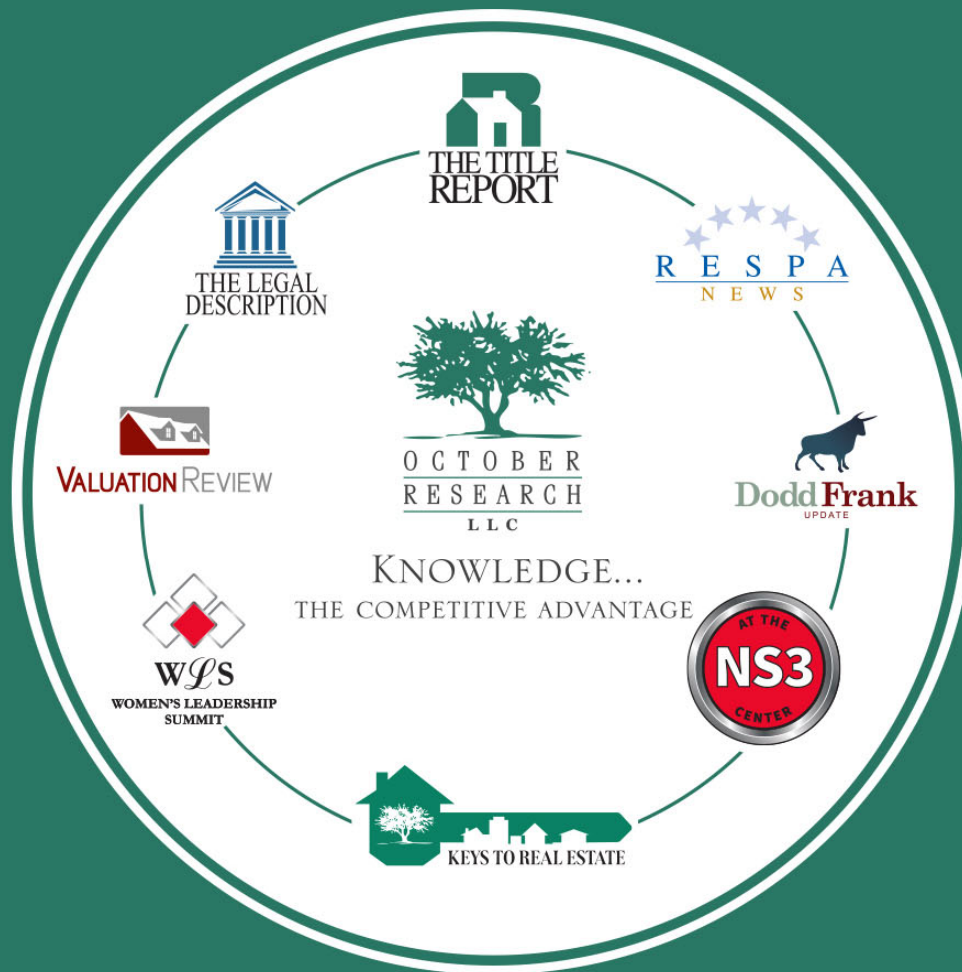
# A Day in the Life of the Title Industry – Market Conditions



# A Day in the Life of the Title Industry – Market Conditions



# How October Research Can Help Support You



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## How October Research Can Help Support You

- Mission: October Research, LLC is dedicated to **educating** and empowering professionals in the real estate transaction to strengthen their business and enhance their position in the marketplace, ensuring the **integrity** of home ownership.
- Independent
- Common Goal = Protecting the Consumer

# How October Research Can Help Support You

- Educate the Industry = You are the Experts
  - Editorial Content
    - Interviews
    - Resources
    - Dedicated Libraries
  - Webinars
  - Podcasts
  - Events = National Settlement Services Summit (NS3)
    - Closed Door Meeting

# Questions?

Mary Schuster, Chief Knowledge Officer

[MSchuster@OctoberResearch.com](mailto:MSchuster@OctoberResearch.com)

Erica Meyer, CEO & Publisher

[EMeyer@OctoberResearch.com](mailto:EMeyer@OctoberResearch.com)



# Resources

State of the Industry Special Report

<https://www.thetitlereport.com/industry-report-2024-ttr.aspx>

*The Title Report* – [TheTitleReport.com](https://www.thetitlereport.com)

*The Legal Description* – [TheLegalDescription.com](https://www.thelegaldescription.com)

*RESPA News* – [RESPANews.com](https://www.respanews.com)

*Dodd Frank Update* – [DoddFrankUpdate.com](https://www.doddfrankupdate.com)

*Valuation Review* – [ValuationReview.com](https://www.valuationreview.com)

Blog – Tuesdays with Mary - [OctoberResearch.com/blog](https://www.octoberresearch.com/blog)

National Settlement Services Summit (NS3) – [NS3TheSummit.com](https://www.ns3thesummit.com)

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## The Title Report

The nation's leading independent provider of market intelligence, in-depth analysis and expert insight for the title and settlement services industry. *The Title Report* has been educating and supporting the industry since 1999.

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# THE LEGAL DESCRIPTION

Legislative and Legal Analysis for Settlement Services

## INSIDE THIS EDITION

Maryland considers deed fraud prohibition, prevention fund

Former employee seeks relief from judgment

Fannie Mae issues latest Selling Guide announcement

Arizona considers notary public requirements legislation

N.Y. considers new procedures for returning surplus tax



## ONLINE EXCLUSIVE

When does joint tenancy terminate?

Read it at  
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## IN THE NEXT EDITION AND BEYOND...

State legislatures are continuing to push legislation through the process before the end of the session. We keep track of the bills impacting your business.

## FinCEN proposes rule to combat money laundering in real estate

The Financial Crimes Enforcement Network (FinCEN) issued a notice of proposed rulemaking to combat and deter money laundering in residential real estate by increasing transparency.

The proposed rule would require certain professionals involved in real estate closings and settlements to report information to FinCEN about non-financed transfers of residential real estate to legal entities or trusts. FinCEN's proposal is tailored to target residential real estate transfers considered to be high-risk for money laundering, while minimizing potential business burden, and it would not require reporting of transfers made to individuals.

“Illicit actors are exploiting the U.S. residential real estate market to launder and hide the proceeds of serious crimes with anonymity, while law-abiding Americans bear the cost of inflated housing prices,” FinCEN Director **Andrea Gacki** said. “Today marks an important step toward not only curbing abuse of the U.S. residential real estate sector but safeguarding our economic and national security.”

The proposed rule describes the circumstances in which a report would

CONTINUED ON PAGE 3

## ON THE RECORD

“Illicit actors are exploiting the U.S. residential real estate market to launder and hide the proceeds of serious crimes with anonymity, while law-abiding Americans bear the cost of inflated housing prices. Today marks an important step toward not only curbing abuse of the U.S. residential real estate sector but safeguarding our economic and national security.”

Andrea Gacki, director, FinCEN  
**FinCEN proposes rule to combat money laundering in residential real estate**

# ABOUT US

*The Legal Description* is a production of October Research, LLC specializing in business news and analysis for the settlement services industry and is published 24 times a year.

#### Contact information:

October Research, LLC  
ATTN: The Legal Description  
3046 Brecksville Road, Suite D  
Richfield, OH 44286  
Tel: (330) 659-6101  
Fax: (330) 659-6102  
Email: [contactus@octoberresearch.com](mailto:contactus@octoberresearch.com)

CEO & Publisher  
Erica Meyer

Chief Knowledge Officer  
Mary Schuster

Editorial & Publishing  
Erica Peterson, *Editorial Director*

#### Editors

Andrea Golby, *The Legal Description*  
Elizabeth Childers, *RESPA News*  
Jonathan Delozier, *The Title Report*  
Mike Holzheimer, *Valuation Review*  
Robert Rozboril, *Dodd Frank Update*

Seminars and Webinars  
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#### eCommerce

Rick Harris, *eCommerce Director*  
Scott Honeycutt, *Graphic Design*

#### Sales & Marketing

Jeff Dashiell, *Senior Account Manager*  
Jake Dean, *Sales Support*

Circulation / Customer Service  
Kathy Hurley

#### Business Offices

Sam Warwar, Esq.  
Michelle Easter, *Accounting*

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## EDITOR'S NOTE

### Representing you to the NAIC

Dear Readers,

On March 17, **Erica Meyer**, our CEO and publisher, and **Mary Schuster**, our chief knowledge officer, will have the opportunity to speak with the National Association of Insurance Commissioners (NAIC) Title Insurance Task Force to discuss the issues impacting the industry.

Among other things, they will present the findings from October Research's *State of the Industry* report, sharing insights gathered from experts across the real estate transaction on how predicted economic and regulatory changes will have an impact on the industry.

They will also share with your regulators the hot button issues, pressures, concerns and opportunities that are impacting you right now, giving them a sense of the realities of the complex environment in which you work every day. We know that a good working relationship with your state regulator is like a handshake; both stakeholders work together to assure protection for the citizens you both strive to protect.

Regulators will also have a chance to hear about the National Settlement Services Summit (NS3), the leading destination for networking, education and collaboration for industry professionals. Every year, NS3 panels bring regulators from across the country together to speak on the issues they are tackling and have a dialogue with industry members on ways to work together to achieve goals important to both. Regulators on the NAIC task force will be invited to join this candid discussion with industry professionals to get a better understanding of how practical regulations can work best for all parties.

The October Research team is excited to have this opportunity as the independent news and education source for the industry to speak with key regulators on your behalf. If you have any questions or information you would like them to share with NAIC members, please email me, and I will pass them along to Meyer and Schuster.

Until next time, stay legal.



Andrea Golby  
Editor  
[agolby@octoberresearch.com](mailto:agolby@octoberresearch.com)



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## CONTINUED FROM COVER

be filed; who would file a report; what information would need to be provided, including information about the beneficial owners of the legal entities and trusts; and when a report about the transaction would be due. Data from the reports would assist the Department of the Treasury and its law enforcement and national security partners in addressing vulnerabilities that leave the U.S. residential real estate market exposed to abuse by illicit actors.

The notice stated, “The abuse of U.S. residential real estate markets threatens U.S. economic and national security and can disadvantage individuals and small businesses that seek to compete fairly in the U.S. economy. The proposed rule is designed to enhance transparency nationwide in the U.S. residential real estate market and to assist Treasury, law enforcement, and national security agencies in protecting U.S. economic and national security interests by requiring certain persons involved in real estate closings and settlements to file reports and maintain records related to identified non-financed transfers of residential real estate to specified legal entities and trusts on a nationwide basis, including information regarding beneficial owners of those entities and trusts.

“Among the persons required by the Bank Secrecy Act (BSA) to maintain anti-money laundering (AML) programs are ‘persons involved in real estate closings and settlements,’” it continued. “Yet, for many years, FinCEN has exempted such persons from comprehensive regulation under the BSA and has issued a series of time-limited and geographically focused ‘geographic targeting orders’ (GTOs) to the real estate sector in lieu of more comprehensive regulation. Information received in response to FinCEN’s GTOs relating to non-financed transfers of residential real estate (residential real estate GTOs) have demonstrated the need for increased transparency and further regulation of this sector. This notice of proposed rulemaking (NPRM) thus proposes a new reporting requirement for non-financed residential real estate transactions, consistent with the BSA’s longstanding directive to impose AML requirements on persons involved in real estate closings and settlements. At the same time, FinCEN has carefully considered the comments received in response to an advance notice of proposed rulemaking on AntiMoney Laundering Regulations for Real Estate Transactions, and FinCEN appreciates the burdens that traditional AML program and SAR (suspicious activity report) requirements may impose on persons involved in real estate transactions. This NPRM therefore proposes a streamlined reporting framework designed to minimize unnecessary burdens while also enhancing transparency. Although certain information collected under this proposed rule may also be available to law enforcement, in some instances, through the new

beneficial ownership reporting requirements imposed by the Corporate Transparency Act (CTA), the CTA’s reporting regime and this proposed rule serve different purposes.

It further stated, “In contrast to the beneficial ownership reporting requirements outlined in the CTA, this proposed rule is a tailored reporting requirement that would capture a particular class of activity that Treasury deems high-risk and that warrants reporting on a transaction-specific basis. More specifically, the proposed rule would require certain persons involved in residential real estate closings and settlements to file, and to maintain a record of, a streamlined version of a SAR, referred to here as a ‘real estate report.’ The persons subject to these reporting and recordkeeping requirements would be deemed reporting persons for purposes of the proposed rule and would be determined through a ‘cascading’ approach based on the function performed by the person in the real estate closing and settlement. The ‘cascade’ is designed to minimize burdens on persons involved in real estate closings and settlements while avoiding gaps in reporting and incentives for evasion. To provide some flexibility in this cascade approach, real estate professionals would also have the option to designate a reporting person from among those in the cascade by agreement.”

The rule would require the following information to be included in the real estate report:

- Reporting person.
- Legal entity or trust to which the property being transferred.
- Beneficial owners of that transferee entity or transferee trust.
- The person that transfers the property.
- The property being transferred.

The reporting person would have to file the report within 30 days after closing.

The notice stated, “Because of the streamlined nature of these real estate reports compared to traditional SARs, as well as the flexible ‘cascade’ framework, persons subject to this reporting requirement would not need to maintain the types of AML programs otherwise required of financial institutions under the BSA.”

The proposed rule is consistent with the BSA’s longstanding directive to extend anti-money laundering measures to the real estate sector and builds on the success of FinCEN’s Real Estate GTO program, which has demonstrated the need for increased transparency and further regulation of this sector nationwide.

Under the proposed rule, persons involved in real estate closings and settlements would continue to be exempt from the anti-money laundering compliance program requirements of the BSA.

The rule will be published in the *Federal Register* on Feb. 16. The public will then have 60 days to provide comment.

## Maryland considers deed fraud prohibition, prevention fund

The Maryland General Assembly is considering a bill that would prohibit the intentional fraudulent sale, conveyance, or lease of real property by a person who does not own the property and require the Department of State Police to disaggregate certain data collected for the Uniform Crime Report and create the Deed Fraud Prevention Grant Fund. The bill, **HB 1419**, was introduced by Delegate **Marlon Amprey**, D-Baltimore City.

It would state that a person, with intent to defraud another, may not:

- Claim to sell or convey or attempt to sell or convey real property that the grantor does not own;
- Claim to sell or convey or attempt to sell or convey real property which the grantor lacks sufficient authority to transfer;
- Claim to lease or attempt to lease real property that belongs to another;
- Obtain or attempt to obtain, or sell or convey, or attempt to sell or convey the real property of another through the execution of a deed by the rightful owner of the property by deception, intimidation, threat, or undue influence;
- Counterfeit a deed or cause a deed to be counterfeited; or
- Record a deed or cause a deed to be recorded in furtherance of a violation of the bill's provisions.
- Additionally, a person would not be able to assist another in a violation of the bill's provisions.

A person who violates these provisions would be guilty of a felony and would be subject to imprisonment of up to 10 years or a fine of up to \$7,500, or both.

A person would also not be able to knowingly, willfully, and with fraudulent intent possess a counterfeit deed. A person who violates this provision would be guilty of a felony and would be subject to up to three years in prison, a fine of up to \$7,500 or both.

The bill would also establish a Deed Fraud Prevention

Grant Fund. The purpose of the fund would be to aid state and local law enforcement agencies in identifying and preventing deed fraud; and, in coordination with the Maryland Legal Services Corp., support legal services for victims of deed fraud.

The Maryland Department of State Police would administer the fund. It would also, in coordination with the Maryland Legal Services Corp., establish standards to determine eligibility for grants under the fund. The fund would consist of:

- Money appropriated in the state budget to the fund;
- Fines collected under Section 8-906 of the Criminal Law Article;
- Interest earnings; and
- Any other money from any other source accepted for the benefit of the fund.
- The fund could only be used to carry out the purposes of the bill and to pay for the administrative expenses of operating the fund.

If adopted, the bill would go into effect Oct. 1.

“The bill would establish a Deed Fraud Prevention Grant Fund. The purpose of the fund would be to aid state and local law enforcement agencies in identifying and preventing deed fraud and... support legal services for victims of deed fraud.”

— **HB 1419**,  
Maryland





# NATIONAL SETTLEMENT SERVICES SUMMIT (NS3)

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## Get a sneak peek at who will be speaking at NS3

The National Settlement Services Summit (NS3) is the premier annual destination for all professionals across the real estate transaction. For three days, innovative leaders will be sharing their experience with attendees to increase collaboration and help the industry grow.



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Mayer Brown



**Francis "Trip" Riley**  
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**Holly Spencer Bunting**  
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## Oregon considers bill on tax foreclosure surplus

The Oregon legislature is considering a bill that would allow the former property owner, or their heirs or successors, to claim from the county any surplus from a property tax foreclosure. The chief sponsor of the bill, **HB 4056**, is Rep. **Charlie Conrad**, R-Eastern Lane County.

The bill defines claimant as “a former owner of a property that was subject to a foreclosure sale, or the former owner’s estate, heirs, devisees or a successor in interest that has acquired substantially all of the former owner’s assets by merger, acquisition, dissolution, or takeover.” The definition would not include:

- The creditors or garnishor of a former owner or the former owner’s estate;
- Other persons holding an interest in the property that was foreclosed by the county; or
- Voluntary or involuntary assignees of a claim against a surplus by a former owner.

Under the proposed law, a claimant would be entitled to the return of the amount of a surplus from a county, if any, upon the earlier of:

- The county selling, transferring, exchanging, leasing for a period of more than one year, or otherwise disposing of the property under ORS chapter 275;
- The county making a determination that the county will retain the property for public purposes; or
- The date 120 days after the property is deeded to the county following tax foreclosure under ORS 312.122 or 312.200.

The claim would have to be made in the form prescribed by the county and include sufficient proof of identity, the basis for the claim and such other information as may be required by the county. A county could require a claim made under the bill’s provision be made as a sworn affidavit or upon declaration under penalty of perjury.

If the estate of a deceased former owner will not be probated, a county would allow a claim to be made by heirs, devisees or a person named as a personal representative in the deceased former owner’s will. The claim would have to include:

- A copy of the former owner’s death certificate;
- A copy of the former owner’s will, if any;
- A statement that the estate is not being probated and

that a small estate affidavit is not being filed for the estate;

- The identity of each beneficiary of the claim;
- The proportion of the surplus distributable to each beneficiary; and
- Signatures of all beneficiaries of the claim acknowledging their participation in the claim.

The bill further states, “A person other than a claimant may not claim the surplus under this section and does not have a claim against the county based upon the surplus or a valid lien against the proceeds before their delivery to the claimant. Any purported assignment of a claim of proceeds is void except for an assignment made for the protection of the interests of the claimant, including an assignment via a power of attorney or custodianship or guardianship proceedings.”

The statute of limitations on claims for a surplus under the bill’s provision would be the earliest of two years after the date the claim arises; 60 days after receiving actual notice from the county of the claimant’s ability to claim a surplus; or 60 days following a county’s final determination of a claim under ORS 34.030.

The value of the property would be the purchase price received by a county from a bona fide purchaser, as defined in ORS 275.088, if any. If the county has not sold the property to a bona fide purchaser, the value of the property would be the fair market value of the property at the time it was deeded to the county. If there is no sale or an appraisal or other reliable indication of fair market value of the property, the value of the property would be the real market value of the property as shown on the tax statement for the property tax year in which the property was deeded to the county. The statute of limitations would apply to claimants of properties deeded to the county before, on or after the effective date of the bill. Claims based on property that was deeded to the county more than two years prior to the effective date of the bill’s adoption and not filed before the effective date of the bill would be barred.

In calculating the surplus, the allowable costs that the county may elect to deduct would include:

- The amount of the judgment under ORS 312.090 and accruing post-judgment interest;
- The amount of taxes and interest thereon that would have been due following the judgment during the



redemption period and through the earlier of the date the county sold or conveyed the property to a third-party; or the date that the claim is made;

- Additional costs that the county may claim under ORS 275.275(1)(a) to (c);
- Costs to reimburse the claim of a municipal corporation that has filed a claim notice under ORS 275.130;
- Amounts recoverable by waste caused by the former owner, including penalties allowed under ORS 312.990, or the costs paid by the county to mitigate or abate a nuisance; or
- In lieu of the penalty and fee under ORS 312.120, the reasonable fees of the foreclosure and sale of the property.

## Former employee seeks relief from judgment

*Eddy Copot v. Stewart Title Guaranty Co. (U.S. District Court for the Northern District of Illinois, No. 19 C 6987)*

The former employee of a title insurer sued their former employer, arguing the insurer sued them for discriminatory reasons. After the court granted summary judgment in the employer's favor, the employee sought relief from the judgment.

### The facts

**Eddy Copot** sued Stewart Title Guaranty Co., arguing Stewart terminated him for discriminatory, retaliatory, or otherwise legally improper reasons.

The court granted summary judgment in Stewart's favor, finding the evidence established that Stewart terminated Copot based on its honest belief he had forged emails to make it appear that his supervisor, **Kelly Rickenbach**, had signed off on title insurance claim denials when she hadn't. Specifically, the facts showed that Rickenbach discovered that several of the claims assigned to Copot contained emails, purporting to be from Rickenbach, approving these claim denials. Rickenbach did not recall sending these emails or approving the denials. There was no record of these emails in the sent items folder of her email account.

The metadata of the emails reflect that they had been manipulated to suggest that they had come from Rickenbach. The original subject lines of the emails had been manually deleted and replaced with text related to Copot's claim files. Additionally, the metadata's routing information showed the emails were sent through an external server. This suggests they were sent from an external email address rather than from a company email address.

Copot filed a motion for relief from judgment, arguing Stewart committed fraud on the court. He argued Stewart withheld in discovery material showing that Rickenbach had emailed Copot an approval to deny a claim that is one of the allegedly forged approvals the court referenced.

### Court decision

U.S. District Judge **Matthew Kennelly** denied Copot's motion.

"Stewart argues that Copot's motion is procedurally improper, but the court will bypass that issue and proceed to the merits," Kennelly stated. "As best as the court can tell, Copot's motion is largely prompted by the fact that in an ARDC [attorney registration and disciplinary commission] proceeding that overlapped with but extended beyond the pendency of the present case, Stewart produced a version of the metadata for the subject email that differed in some respects from the metadata upon which it had relied in seeking summary judgment in the present case. Copot says that the 'real' metadata — which he says is the version produced to the ARDC — shows that Rickenbach actually sent the email (and thus that it was not forged). He also says that he was not able to discover this until the ARDC proceedings, after the lawsuit was over, because Stewart had convinced the court not to require it to produce metadata during discovery.

"Copot has come nowhere near establishing a fraud on the court or improper conduct by Stewart or its counsel. There are multiple problems with his arguments," Kennelly continued. "First, he has not shown that the 'different' metadata that was produced by Stewart during the ARDC proceedings actually shows what he claims, that is, that Rickenbach actually sent an email approving the denial of the particular title insurance claim. Rather, the metadata produced to the ARDC, like the metadata provided earlier,

shows that the email was sent not via a Stewart email server, but rather from an ADP server, which was the vendor that Stewart used for payroll and HR systems. The proposition that Rickenbach would have (or even would have been able to) routed an email that way didn't make any sense before, and it doesn't make any sense now."

The court also noted Rickenbach did not admit during her ARDC testimony that she sent the email. Instead, she reaffirmed she had not sent it.

In regard to Copot's contention that Stewart prevented disclosure of the metadata earlier, the court noted it did decline to order Stewart to produce metadata in December 2020.

"But the dispute at that time was not focused on the subject email. It was much broader: Copot had requested production of metadata on the entire contents of the four claim files that were at issue in connection with his termination," Kennelly stated. "The court's ruling was that Copot had not shown a need for production of the metadata for that broad swath of material; the ruling was not focused on the particular email in question.

"Fifth, and [M]ore importantly on that particular point, Stewart did produce in February 2021, pursuant to a later ruling by the court, the 'native' file for the particular e-mail at issue. That native file contained the email's metadata," Kennelly continued. "Thus, Copot had it available to examine and, at least as significantly, for his retained forensic data expert to examine. Copot had that opportunity both during the pendency of this case and after, during the ARDC proceedings. Even now, he has offered nothing affirmative (for example, a report from his expert) to attempt to show that Stewart, or anyone connected with Stewart, doctored anything, or that the metadata means something different from what Stewart has always contended.

"In sum, Copot has failed to show any basis for the court to vacate its summary judgment ruling, or for any of the other relief he seeks. The court denies his motion. The court also denies Stewart's request to sanction Copot for filing the motion. Though Copot's motion comes close to the line between zealous advocacy and vexatious or otherwise sanctionable conduct, the court concludes that it does not cross that line," Kennelly concluded.

## Fannie Mae issues latest Selling Guide announcement

Fannie Mae issued its latest Selling Guide announcement, SEL-2024-01. The guide provides updates regarding flood insurance requirements and signature requirements for notes.

The update to B7-3-06, Flood Insurance Requirement, incorporates previously issued temporary policies related to selling loans requiring flood insurance in the event of a lapse of the National Flood Insurance Program (NFIP).

It stated, "The NFIP may lapse due to a shutdown of the federal government or if Congress does not renew the NFIP's authorization to issue new policies, increase coverage on existing policies, or issue renewal policies.

"For the duration of such a lapse, a lender may sell a loan to Fannie Mae where flood insurance is otherwise required without an active flood insurance policy provided the requirements below are met," the guide continued. "During the lapse, lenders must have a process in place to identify properties securing loans sold to us without proper evidence of active flood insurance on the

conditions that the borrower must provide acceptable evidence of:

- "A completed application for NFIP flood insurance and proof of the premium payment or the final settlement statement reflecting payment of the initial premium. or
- "The assignment of an existing NFIP flood insurance policy from the property seller to the purchaser."

The update to B8-3-03, Signature Requirements for Notes, adds clarification that an individual who is not a loan applicant but whose credit is used in qualifying for the loan is not required to sign the note. If they have an ownership interest in the property, they must sign.

It added the following, "An individual who is not a loan applicant but whose credit is used in qualifying for the loan pursuant to a requirement of applicable law, is not required to sign the note, but if they have an ownership interest in the property must be named in and sign the security instrument."

## Arizona considers notary public requirements legislation

The Arizona Legislature is considering legislation that would amend the state's notary public requirements. The bill, **HB 2588**, is sponsored by Rep. **Timothy Dunn**, R-Yuma.

The bill adds section 11-472 to the Arizona Revised Statutes. It states, "If a document to be recorded is a deed, quitclaim deed, or deed of trust or any other document that affects real property, an individual shall provide the recorder with two valid forms of identification, unless the document to be recorded is submitted by any of the following:

- "An escrow officer.
- "A title agent or title insurer.
- "A state chartered or federally chartered bank insured by the Federal Deposit Insurance Corporation.
- "An active member of the state bar of Arizona.
- "An agency, branch or instrumentality of the federal government.
- "A trusted submitter.
- "A governmental entity."

It amends section 41-263(C) to state, "If a notarial act is performed under this section, the certificate of notarial act required by section 41-264 and the short form certificate provided in section 41-265 must indicate both of the following:

- "That the notarial act was performed using communication technology.
- "The name of the communication technology used to perform the notarial act."

The certificate would have to indicate the name of the communication technology that was used.

It would require the audiovisual recording of a remote notarization to be retained for 10 years instead of five.

It would amend section 41-266 to require a notary's stamp include the notary's commission number and the great seal of the state of Arizona. If the notarization is a remote or electronic notarization, the stamp would have to contain the commission that is specific to the remote or electronic notary.

Section 41-266(A)(2) would be amended to state, "If a notarial officer attaches a notarial certificate to a document

on a separate sheet of paper, the attachment shall contain a description of the document and include all of the following:

- "The title of or the type of document.
- "The date.
- "The number of pages of the document.
- "Any additional individuals who signed the document other than those on the notarial certificate."

It would amend section 41-269 regarding the application for a notary commission to state the secretary of state may request any reasonably necessary information from an applicant. This includes:

- Prior criminal records.
- A valid fingerprint clearance card.
- An affidavit explaining whether the applicant has been convicted of a felony or misdemeanor; had a business or professional license denied, suspended or revoked, or had any other disciplinary action taken or administrative order entered against the applicant; or had any adverse decision or judgment entered against the applicant arising out of the conduct of any business in or involving a transaction in real estate, cemetery property, timeshare intervals, or membership camping campgrounds or contracts involving fraud, dishonesty or moral turpitude.

It would add section 41-269.01 which states, "Unless otherwise prohibited by law, any document that is required to be filed pursuant to this article may be filed in an electronic format that is approved by the secretary of state." A document filed in accordance with this article would be deemed to comply with all of the following:

- The filing requirements of the statute.
- The requirement that a filing be submitted with a written signature.
- Any requirement that the filing be filed under penalty of perjury.

The secretary of state would be authorized to adopt rules to require anyone who submits a document for filing to submit a tangible copy of the document as a prerequisite to the document being deemed filed. The bill would clarify that all civil and criminal statutes applicable to the filing of paper documents apply to all documents filed pursuant to the bill's provisions.

Additionally, it would add section 41-269.02, which would require an applicant to obtain a valid fingerprint clearance card before receiving and holding a commission. The applicant would be responsible for providing the fingerprint clearance card to the secretary of state. The secretary of state could not issue a commission to an original applicant before receiving a valid fingerprint clearance card.

The secretary of state would have to suspend the commission if the fingerprint clearance card is determined to be invalid or is suspended and an applicant who was issued a notary commission fails to submit a valid fingerprint clearance card within 10 days after being notified by the department of public safety.

The secretary of state would be able to issue a cease-and-desist order against a person who the secretary of state has reason to believe is acting as a notary public without a current commission and could refer the matter to the attorney general to conduct a criminal investigation.

It would require a notary journal entry include the notary public's legible thumbprint for all notarial acts except those performed for remotely located individuals. If a notary public is notarizing a quitclaim deed or warranty deed, the journal entry must include the legible thumbprint of the notary and the individual for whom the notarial act is performed, unless the notarial act is being performed for remotely located individuals.

## N.Y. considers new procedures for returning surplus tax

The New York Legislature is considering legislation that would implement procedures for returning surplus funds to homeowners in response to *Tyler v. Hennepin County* and to provide homeowners at risk of tax lien foreclosures the same protections that are afforded to borrowers in residential mortgage foreclosure proceedings.

The bill, **SB 8512**, is being sponsored by Sen. **Kevin Thomas**, D-Garden City.

It first changes the amount of interest to be added to all taxes received after the interest-free period, and all delinquent taxes would be 16 percent per annum.

It also states, "Any owner of a residential property who occupies the property as their primary residence (or whose heirs or distributees occupy the property as their primary residence where the homeowner is deceased) or any purchaser of a contract for a residential property (or successor in interest to such purchaser) subject to a tax lien on any parcel of real property, including those liens otherwise exempt under this article, shall have the following rights:

- "To have any foreclosure on any real property tax lien pursuant to section 902 of this chapter be a judicial proceeding specific to each parcel;
- "Where the property is the primary residence of an owner entitled to tax exemption based on age, disability, or veteran status, a foreclosure may not be maintained;
- "To not have exemptions removed or waived for nonpayment of property taxes;

- "To be informed of the amount of tax due, the number of tax years for which the parcel has been in arrears, the date on which the redemption period ends, the accepted forms of payment, the location where payments shall be made and the contact information for the responsible taxing authority, including but not limited to, the taxpayer advocate or other similar office within the taxing authority working with homeowners to resolve tax arrears;
- "To receive pre-foreclosure notices, which shall be conditions precedent to maintenance of a foreclosure on any tax lien governed by the service requirements of section 1304 of the real property actions and proceedings law;
- "To participate in a mandatory settlement conference process equivalent to the process required in mortgage foreclosure actions pursuant to rule 3408 of the civil practice law and rules, which shall be governed by the same good faith negotiation standard governing that provision, with the goal of: (i) negotiating a mutually agreeable resolution to avert foreclosure, including, but not limited to, establishing an affordable repayment plan, abatement of fees, penalties or other charges, forbearance of amounts due, or other home saving resolution; or (ii) whatever other purposes the court deems appropriate. A party prosecuting a tax lien foreclosure shall be prohibited from charging the homeowner for any fees associated with participating in the settlement conference. Explicitly incorporated into this bill of rights are subdivisions (c) through (n) of rule 3408 of the civil practice law and rules, and the office of court administration shall within 90 days of the effective date of this section promulgate

rules implementing this mandatory settlement conference process which shall adapt the foregoing subdivisions to the needs of tax lien foreclosure cases and which shall, without limitation, include a notice of the scheduling of the conference that shall require the parties to appear at the conference with required information for a meaningful conference and with authority to engage in settlement negotiations;

- “To apply any payments toward delinquent taxes in the order in which the liens became due;
- “In the event that a residence is foreclosed upon, to receive any surplus following the sale of the property after the tax lien is satisfied ahead of unsecured creditors pursuant to section 5206 of the civil practice law and rules; and
- “Where there is a transfer to a municipality pursuant to section 1136 of this article or where there is a foreclosure auction with no bidders and the municipality takes possession of the property, any subsequent sale of the property must be an arm’s length transaction in which the owner has an absolute right to any surplus funds.”

It also adds section 1185-a to require a pre-foreclosure notice, which would have to be sent by the taxing authority or purchaser of delinquent tax liens to the homeowner by registered or certified mail and also by first-class mail to the last known address of the homeowner and to the residence subject to the tax lien. The notice would have to be sent in a separate envelope from any other mailing or notice. Notice would be given as of the date it is mailed. The notice would have to contain a current list of at least five housing counseling agencies serving the county from the most recent listing available from the department of financial services. If a homeowner has limited English proficiency, the notice would have to be in the homeowner’s native language.

It would also add a new Title 6 to Article II of the real property tax law. It would require tax districts to include a statement on every property tax collection notice notifying homeowners of available exemptions.

It would establish a senior citizen delinquent tax deferral program in which an owner may defer delinquent taxes if:

- the property is a one-to-three family residential property;
- the property serves as the primary residence of the owner;
- all of the owners are at least 70 years old;
- the gross income of the homeowner is at or below 200

percent of the federal poverty level; and

- the deferral amount plus interest does not exceed 80 percent of the owner’s equity in the property.

All amounts owed by the owner would become due immediately upon the occurrence of any of the following:

- the owner ceases to own the residence.
- the residence ceases to be the owner’s primary residence.
- the owner’s equity in the residence falls below the required eligible amount.

A residential owner of property with a tax delinquency exceeding \$500 would be entitled to enter into a repayment plan to cure a tax delinquency at any time until the date of redemption. The terms of the repayment plan would be at least 18 months, unless a shorter duration is requested by the owner. The amount would be paid in equal amounts on each payment due date. No penalties would be imposed and interest would not accrue throughout the repayment plan period.

It also adds section 1194-a, which states, “Not more than five days after a former owner is divested of title, the tax district shall serve upon the former owner, or the former owner’s successors, heirs, or assigns, a notice of potential compensation. The tax district may serve anyone whose interest is claimed to be subject and subordinate to the foreclosed taxes with such notice of the potential compensation.”

It continues, “Such notice of potential compensation shall be served upon the former owner by regular first class mail and by certified mail, to the property address and the last known address of the former owner.”

Within 60 days of the loss of title resulting from a tax foreclosure, the tax district would have to determine the appraised value of the property. Within 90 days of the loss of title resulting from a tax foreclosure, the tax district would file with the office of the clerk a notice of just compensation. The notice would have to be served personally upon the former owner and served by regular mail upon attorneys appearing on behalf of the former owner.

The notice would have to include:

- an offer of just compensation;
- an itemization of deductions from the appraised value; and



- a copy of the written appraisal obtained by the tax district.

Within 60 days of receiving the offer of just compensation, the former owner would have to complete and serve upon the tax district a response to the notice of just compensation. The response would have to include an election by the former owner to either accept the tax district's offer or reject the offer and contest the appraised value. If the former owner accepts the offer, they would enter into a written agreement with the tax district. If the former owner rejects the offer, the tax district would have to enter into negotiations to reach a consensual agreement with the former owner. If the former owner is dissatisfied with the result of the negotiations, the former owner could submit to a court of competent jurisdiction a request for a hearing to determine just compensation. The court would

then direct the parties to exchange and file appraisal reports before the hearing and schedule the hearing to determine just compensation.

The bill states, "The former owner shall have a period of up to three years from the loss of title to either (i) accept the tax district's offer; or (ii) request a hearing to ascertain just compensation. In the event of any conflict, the three-year period specified in this paragraph shall control. Following such three-year period, funds held by the tax district after the payment of real property taxes, associated interest, and penalties reasonably related to the cost of the delinquency owed to the tax district shall be transferred to the New York state comptroller's office of unclaimed funds."

If adopted, the bill would take effect immediately.

## Kansas Legislature considers contract for deed act

The Kansas Legislature is considering a bill that would regulate contract for deed transactions. The bill, **HB 2101**, is being sponsored by the Committee on Financial Institutions and Pensions.

The bill defines contract for deed as "an executory agreement in which the seller agrees to convey title to real property to the buyer and the buyer agrees to pay the purchase price in five or more subsequent payments exclusive of the down payment, if any, while the seller retains title to the property as security for the buyer's obligation. Option contracts for the purchase of real property are not contracts for deed."

It would permit a contract for deed or affidavit of equitable interest to be recorded in the office of the county register of deeds.

It states, "A seller shall not execute a contract for deed with a buyer if the seller does not hold title to the property. Except as provided further, a seller shall maintain fee simple title to the property free from any mortgage, lien or encumbrance for the duration of the contract for deed."

The subsection would not apply to a mortgage, lien or encumbrance placed on the property due to the conduct of the buyer or with the agreement of the buyer as a condition of a loan obtained to make improvements on the property.

Additionally, it would not apply to a mortgage, lien or encumbrance placed on the property by the seller prior to the execution of the contract for deed if:

- "The seller disclosed the mortgage, lien or encumbrance to the buyer;
- "The seller continues to make timely payments on the outstanding mortgage, lien or encumbrance;
- "The seller disclosed the contract for deed to the mortgagee, lienholder or other party of interest; and
- "The seller satisfies and obtains a release of the mortgage, lien or other encumbrance not later than the date the buyer makes final payment on the contract for deed unless the buyer assumes the mortgage, lien or other encumbrance as part of the contract for deed."

A buyer's rights under a contract for deed would not be forfeited or canceled except as provided in the bill's provisions, notwithstanding any provision in the contract providing for forfeiture of buyer's rights. Nothing in the bill would be construed to limit the power of the district court to require proceedings in equitable foreclosure.

The buyer's rights under a contract for deed would not be forfeited until the buyer has been notified of the intent to forfeit and has been given a right to cure the default, and the buyer has failed to do so within the time period allowed. A timely tender of cure would reinstate the contract for

deed.

specified periods of time.”

A notice of default and intent to forfeit would:

- “Reasonably identify the contract and describe the property;
- “Specify the terms and conditions of the contract with which the buyer has not complied; and
- “Notify the buyer that the contract will be forfeited unless the buyer performs the terms and conditions within

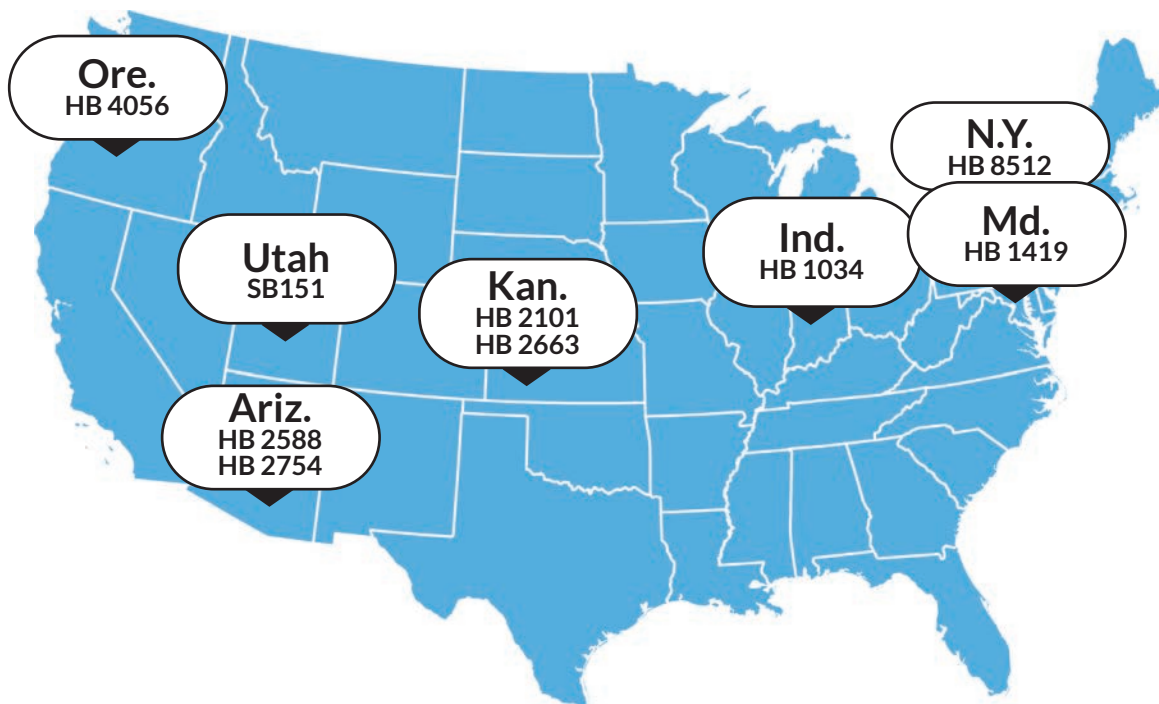
The bill further states, “A notice of default and intent to forfeit shall be served on the buyer in person, or by leaving a copy at the buyer’s usual place of residence with someone of suitable age and discretion who resides at such place of residence, or by certified mail or priority mail, return receipt requested, addressed to the buyer at the buyer’s usual place of residence.”

## Utah considers fraudulent deed amendments

The Utah Legislature is considering a bill that would create civil liability for an individual who records a fraudulent deed and establishes a process by which an individual may nullify a fraudulent deed. The bill, **SB 151**, is being sponsored by Sen. **Curtis Bramble**, R-Provo.

causes a fraudulent deed to be recorded would be liable to a record interest holder. If the court determines that a deed is a fraudulent deed under Section 57-31-202, the purported grantor would be liable to the record interest holder for the greater of \$10,000 or treble actual damages; and reasonable attorney fees and costs.

A purported grantor who records a fraudulent deed or



The bill would allow a record interest holder to petition a court to nullify a fraudulent deed and record a lis pendens on a property affected by the fraudulent deed. The petition would have to state with specificity that the deed is a fraudulent deed and be supported by a sworn affidavit of the record interest holder. The court considering the petition could dismiss the petition without a hearing if the court finds the petition insufficient. If the court finds the petition sufficient, the court would schedule a hearing within 10 days after the petition is filed to determine whether the deed is a fraudulent deed.

The record interest holder would have to serve a copy of the petition and a copy of the notice of the hearing on the purported grantor and purported grantee. The purported grantor and purported grantee could attend the hearing in order to contest the petition.

The hearing would only determine whether a document is a fraudulent deed and would not determine any other property or legal rights of the parties or restrict other legal remedies of any party. If, after the hearing, the court determines that a deed is a fraudulent deed the court would:

- Issue an order declaring the fraudulent deed void ab initio;

- Direct the county recorder to remove the deed from county records; and
- Award costs and reasonable attorney fees to the petitioner.

The record interest holder could submit a certified copy of the order, containing a legal description of the real property, to the county recorder for recording. The fraudulent deed would be void ab initio and the fraudulent deed would provide no conveyance of any interest in real property.

If, after the hearing, the court determines the deed is not a fraudulent deed, the court would:

- Dismiss the petition;
- Award costs and reasonable attorney fees for the purported grantor and purported grantee; and
- Include in the dismissal order a legal description of the property.

The purported grantor or purported grantee would be able to record a certified copy of the dismissal order.

If adopted, the bill would take effect May 1.

## Arizona legislature considers real estate legislation

The Arizona Legislature is considering legislation that would, among other things, add provisions to state law regarding real estate transactions, identification, and recordings. The bill, **HB 2754**, was introduced by Rep. **Lupe Contreras**, D-Cashion.

It would amend Section 6-841.01 of the Arizona Revised Statutes to include subsection B, which would state, “Before receiving or collecting monies to be held in escrow for the sale or other transfer of real estate or any legal or equitable interest in real estate, excluding leases, an escrow agent must record a notice of pending sale in the county in which the property is located. To provide notice of the recorded document, the escrow agent shall participate in the notification system established pursuant to section 11-467. The notice of pending sale must contain the address and the legal description of the property, the listing brokerage’s name and the listing brokerage’s contact information. If the transaction in escrow cancels for any reason, the escrow agent must record a notice of canceled transaction. The escrow agent shall also notify all of the following that are listed on the agreement that governs the pending sale real

estate transaction that is described in this subsection:

- “Real estate brokers as defined in Section 32-2101.
- “Real estate salespersons as defined in Section 32-2101.
- “Buyers.
- “Sellers.”

Section 11-466 requires recorders to file and record with the record of deeds, grants and transfers certified copies of final judgments partitioning or affecting the title to or possession of real property. The bill would require that, “If the document to be recorded is a deed, quitclaim deed, deed of trust or other document affecting real property, an individual must provide the recorder with two valid forms of identification unless the document to be recorded is submitted by any of the following:

- “An escrow officer or a title insurer or title insurance agent.
- “A state chartered or federally chartered bank that is insured by the Federal Deposit Insurance Corp.
- “An active member of the State Bar of Arizona.



- “An agency, branch or instrumentality of the federal government.
- “A trusted submitter.
- “A governmental entity.”

It would add Section 11-544, which would state, “Each assessor in this state shall allow a real property owner to file a notarized affidavit stating that the owner is the only authorized person who may change the mailing address of the real property.” If a real property owner submits such a notarized affidavit, the mailing address of the real property could be changed only if the real property owner subsequently files a notarized affidavit stating the new mailing address of the real property.

It further amends section 41-319 to add subsection (G), which states, “If a document to be notarized by a notary public is a power of attorney document or a deed, quitclaim deed, deed of trust or other document affecting real property, the notary public shall require the party signing the document to place the party’s right thumbprint in the journal. If the right thumbprint is not available, the notary public shall have the party use the party’s left thumb or any available finger and shall so indicate in the journal. If the party signing the document is physically unable to provide a thumbprint or fingerprint, the notary public shall accept

biometric identification using two-point identification with knowledge-based identification with live credential evaluation. If the party signing the document is physically unable to provide a thumbprint or fingerprint or complete biometric identification, the notary public shall so indicate in the journal and provide an explanation of that physical condition or biometric limitation.”

This subsection would not apply to a trustee’s deed resulting from a decree of foreclosure or a nonjudicial foreclosure, or a deed of reconveyance.

Additionally, the bill would amend Section 44-5101 to require that before entering into any binding agreement a wholesale buyer of residential property would have to:

- Exercise due diligence to ensure that the seller is the bona fide owner or legally authorized representative of the residential real property.
- Obtain and retain for at least five years evidence of having checked a valid government-issued form of identification for unrepresented parties in a real estate transaction before engaging in wholesale activity. The evidence would have to include a description of the type of identification and the identification’s expiration date.

## Indiana considers transfer on death deed legislation

The Indiana General Assembly is considering legislation regarding the impact on insurance coverage of a transfer on death, as well as the validity of a transfer on death transfer. The bill, **HB 1034**, is being sponsored by Rep. **Jerry Torr**, R-Hamilton County.

It states, “each transferee of a named insured’s insurable interest in real or personal property is also an insured to the extent of the named insured’s insurable interest in real or personal property that the transferee has acquired or received through a transfer.”

The coverage would last for 60 days immediately following the death of the insured. It states, “At the time of the insured’s death, the transferee succeeds to the rights and obligations of the insured under the casualty insurance policy or liability insurance policy, to the extent of the insured’s insurable interest in real or personal property that the transferee has acquired or received through a transfer for the 60-day period.”

This section would apply to loss or damage incurred after Dec. 31.

It would amend IC 32-17-14-11 to add subsection (j), which states “For a transfer on death deed executed after Dec. 31, the transfer on death deed may include the following warning, ‘WARNING: After the death of the owner, the owner’s insurance policy is required by IC 27-1-13-18 to cover the real property transferred for a period of time as set forth in IC17-1-13-18(e) and IC 27-1-13-18(f) expires, the insurance policy may no longer cover the real property and the beneficiary of a transfer on death deed and the real property may become uninsured.’

“A transfer on death deed is not invalid due to the failure to include the warning described in this subsection, or due to a defect in the wording of the warning described in this subsection,” the bill continues.

The bill would also amend IC 32-17-14-26(b)(20).

Currently, the bill requires that on the death of an owner whose transfer on death deed has been recorded, the beneficiary must file an affidavit in the office of the recorder. It establishes the information that must be included in the affidavit.

The bill would add the following to the provision, “A failure by the beneficiary to file an affidavit under this subdivision or a delay by the county recorder in recording the affidavit does not affect the validity of the transfer on death transfer

to the beneficiary under this chapter. However, until the affidavit is recorded, the transfer on death beneficiary or beneficiaries named in the transfer on death deed and the estate of the deceased owner are jointly and severally liable for property taxes assessed with respect to the real property under IC 6-1.1 for assessment years beginning with the assessment year in which the owner’s death occurs.”

If adopted, the bill would go into effect July 1.

## MIA issues information security program certification bulletin

The Maryland Insurance Administration issued Bulletin 24-6, regarding information security program certification. The first certification is required on or before April 15.

The bulletin states, “Carriers that are required to file an information security program certification with the insurance commissioner must do so on or before April 15 of each year. The first certification is required on or before April 15, 2024.”

It noted that Bulletin 23-18 provided information regarding the requirements to have in place, a comprehensive written information security program based on the carrier’s risk assessment and a written incident response plan designed to promptly respond to, and recover from, a cybersecurity event.

“The purpose of this bulletin is to provide the method for

carriers to file the required Information security program certification online,” the bulletin states. “The information security program certification can now be submitted via electronic form at: <https://marylandinsurance.jotform.com/240356360389965>.”

It noted that this is the primary method of submitting the filing. Questions regarding the form should be sent to **Raymond Guzman**, chief of market analysis, market regulation and professional licensing at Raymond. [guzman@maryland.gov](mailto:guzman@maryland.gov).

“Questions or comments on the requirement to file may be sent to **Mary Kwei**, associate commissioner, Market Regulation and Professional Licensing, Maryland Insurance Administration, 200 Saint Paul Place, Suite 2700, Baltimore, MD 21202, or call 410-468-2113, or email to [mary.kwei@maryland.gov](mailto:mary.kwei@maryland.gov),” it stated.

## Maine governor nominates superintendent of insurance

Maine Gov. **Janet Mills** nominated **Robert Carey** to serve as superintendent of the Maine Bureau of Insurance.

In a release announcing the nomination, Mills noted that Carey has more than two decades of experience advising state regulators and lawmakers on insurance policies, markets, and regulation. Before establishing his own consulting practice in 2008, Carey was the first director of planning and development for the Massachusetts Health Connector.

“Bob Carey brings decades of experience advising states, including Maine, on building strong insurance markets that provide quality coverage and save individuals and small businesses money on their premiums,” Mills said. “I am pleased to nominate him to serve as superintendent of the bureau of insurance.”

“I am honored to be nominated, and I thank Gov. Mills,” Carey said. “The bureau has a strong team of professionals that works every day on behalf of Maine

*Continued on Page 16*

# Closing Arguments

## Upcoming Events

NAIC Title Insurance Task Force Meeting  
March 17th | Phoenix, AZ

American Escrow Association  
May 3-5th | Las Vegas, NV

National Settlement Services Summit (NS3)  
May 21-23rd | Naples, FL



## Former Maryland state's attorney convicted of fraud

A federal jury convicted **Marilyn Mosby**, 44, of Baltimore, on the charge of making a false mortgage application when she was Baltimore City state's attorney, relating to the purchase of a condominium in Long Boat Key, Fla. The jury acquitted her of making a false mortgage application related to her purchase of a home in Kissimmee, Fla.

According to the evidence presented at trial, in February 2021, Mosby made a false statement in an application for a \$428,400 mortgage to purchase a condominium in Long Boat Key, Fla. As part of the application, Mosby falsely stated that she had received a \$5,000 gift from her husband to be applied to the purchase of the property. According to the evidence presented at trial, Mosby made this statement in order to secure a lower interest rate. According to the evidence presented at trial, Mosby did not receive a \$5,000 gift from her husband, but rather transferred \$5,000 to him, and he then transferred the \$5,000 back to her.

The conviction was announced by U.S. Attorney for the District of Maryland **Erek Barron**; Acting Special Agent

in Charge **R. Joseph Rothrock** of the Federal Bureau of Investigation, Baltimore Field Office; and Special Agent in Charge **Kareem Carter** of the Internal Revenue Service - Criminal Investigation, Washington, D.C. Field Office.

On Nov. 9, 2023, Mosby was previously convicted on two counts of perjury related to the withdrawal of funds from the city of Baltimore's Deferred Compensation Plan, when she claimed she suffered adverse financial consequences during the COVID-19 pandemic while she was Baltimore City state's attorney. Mosby faces a maximum sentence of five years in federal prison for each of the two counts of perjury.

Barron commended the FBI and IRS-CI agents for their work in the investigation and thanked the Baltimore city office of the inspector general for its assistance. Barron also praised Assistant U.S. Attorneys **Sean Delaney** and **Aaron Zelinsky** for their focus and hard work throughout the case.

### *Continued from Page 15*

people and Maine businesses, and I look forward to working with them if I am confirmed by the Senate. There is no shortage of challenging issues across insurance markets. Working with bureau staff, the Mills administration, legislators and stakeholders throughout Maine to tackle these challenges would be a privilege.”

Through his practice, Carey has advised more than a dozen states on their insurance markets and health insurance marketplaces. In 2021, Carey was a key contributor to the state of Maine's successful application for a State Innovation Waiver. The waiver — the result of Gov. Mills' Made for Maine Health Coverage Act — allowed Maine to implement a series of innovations designed to reduce the cost of health coverage for individuals and small business employees.

Carey has also worked with the Massachusetts Division of Insurance, conducting commercial rate reviews for the state's individual and small group markets. He has conducted market exams, supported a special commission on dental insurance, and advised a special legislative commission.

His private sector experience includes providing strategic advice to large physician practices and a start-up health insurance provider.

Carey's confirmation is subject to approval by the Joint Standing Committee on Health Coverage, Insurance, and Financial Services, and confirmation by the Maine Senate.

# Real Estate Money Laundering Rule



# AGENDA:

- The basics about FinCEN and Money Laundering
- The proposed rule
  - Who is covered
  - Which transactions
  - What to collect
  - How to report
- Potential Impact on Title Business

# The lawyers make me add this

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# Background







# What is FinCEN

- Established in 1990
  - Department of the Treasury.
  - Bank Secrecy Act (BSA)
- Its mission is “to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.”

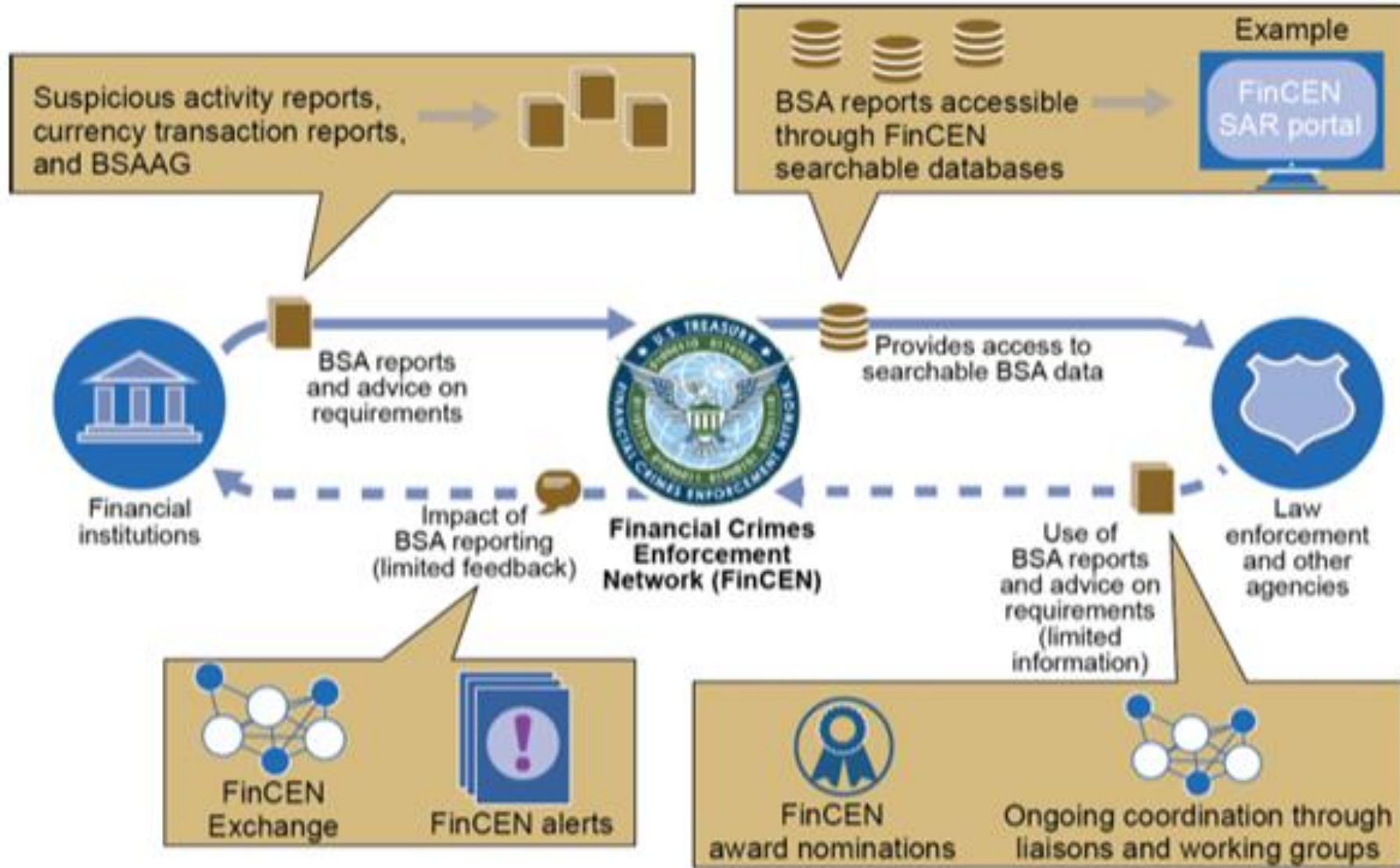
# What does FinCEN do

- Receiving and maintaining financial transactions data
  - Suspicious Activity Reports
  - Currency Transaction Reports
- Data analysis and dissemination for law enforcement purposes,
  - Works with: U.S. Department of Homeland Security, U.S. Internal Revenue Service, the U.S. Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Federal Bureau of Investigation, and U.S. Immigration and Customs Enforcement.
  - Identify sanction evasion with Office of Terrorism and Financial Intelligence (TFI)
- Cooperation with international bodies and foreign governments
- FinCEN Exchange
  - FinCEN's voluntary public-private partnership brings together law enforcement, national security agencies, and financial institutions to help combat financial crime.

# The Bank Secrecy Act

- Primary U.S. anti-money laundering (AML) law
  - 31 USC 5311
  - Passed in 1970
  - California Bankers Assn. v. Shultz, 416 U.S. 21 (1974): Holding that enactment was within the legislative authority of Congress and did not violate First, Fourth, and Fifth Amendments.
- Purpose
  - detecting, deterring and disrupting terrorist and criminal financing networks
- Real estate closing professionals first added to BSA definition of a financial institution in 1988 as part of Anti-Drug Abuse Act
  - Industry given a temporary exemption from need to have full AML program in 2003

Figure 1: Feedback Loop Between Financial Institutions, FinCEN, and Users of BSA Reports



BSA = Bank Secrecy Act  
 BSAAG = BSA Advisory Group  
 SAR = Suspicious Activity Report

# Money Laundering & Real Estate

# Real Estate and Money Laundering

- “Illicit actors are exploiting the U.S. residential real estate market to launder and hide the proceeds of serious crimes with anonymity, while law-abiding Americans bear the cost of inflated housing prices,” - FinCEN Dir. Andrea Gacki
- Real estate has been consistently indicated as a risk in National Money Laundering Assessment since at least 2015
- Customer due diligence for real estate has been part of Financial Action Task Force recommendations since 2012
  - “[t]he purchase of real estate allows for the movement of large amounts of funds all at once in a single transaction as opposed to multiple transactions of smaller values.” See Financial Action Task Force, Guidance for a Risk Based Approach: Real Estate Sector (July 2022)
- Anticorruption group Global Financial Integrity estimated “at a minimum, US\$2.3 billion was laundered through the real estate sector in the U.S.” between 2015-2020

# Geographic Targeting Orders

- Background
  - Started in 2016
  - Covered Miami and NYC originally but expanded to 69 counties
  - Focused on all cash residential transactions by legal entities
    - Originally was high dollar but later changed to \$300k (\$50k in Baltimore)
- GTOs proved highly valuable to FinCEN
  - 40% of GTO reports correlated to a bank SAR
    - FinCEN Director during Congressional Testimony
  - 7% involve a subject of an ongoing FBI investigation

# The Proposed Rule



# The Basics

- **What is Covered?**
  - All cash purchases of residential real estate where the buyer is a legal entity or trust
- **What must be Reported?**
  - Basic transaction information (closing date, purchase prices, parties names, etc.)
  - Beneficial ownership info (focused on buyer)
  - Payments information
- **Who must Report?**
  - Generally the settlement agent, with guidelines if there is no settlement agent
- **When?**
  - 30 days after closing

# What Is Covered

- How does Rule define Residential Real Estate?
  1. real property designed for 1-4 family occupancy, including condos and dual use properties
  2. vacant or unimproved land zoned (or permitted) for construction for 1-4 family occupancy
  3. shares in a cooperative housing corporation
- Includes sales anywhere in the US (50 states), DC, Puerto Rico, overseas territories, and Indian lands.
- FinCEN expected to issue commercial real estate rule later this year

# What is Covered

- Buyer (or transferee) is a **legal entity or trust**
  - Defines transferee entity as anyone other than a trust or individual
  - Transferee trust is any arrangement where a person places assets under the control of a trustee for the benefit of one or more persons
  - Reporting still applies even if a co-purchaser is not someone that must report
- There are limited exceptions for certain entities
  - Similar to CTA exceptions: companies that have beneficial ownership registered with other federal or state regulators

# Who Must Report

# Defining a Reporting Person

- Primary responsibility is on settlement agents
- Lays out a waterfall or cascade (similar to 1099 report) for deals where there is no settlement agent
  - First choice: the person who is listed as the settlement agent on a settlement statement
  - Second choice: the person that prepares the settlement statement.
  - Third choice: the person that files the deed for recordation
  - Fourth choice: the person that issues the owner's title insurance policy
  - Fifth choice: the person that dispenses the greatest amount of funds
  - Sixth choice: the person that did a title examination
  - Final choice: the person that prepares the deed.
- Applies to attorneys the same as non attorney agents

# What is Reported

# Transaction Info

- Information concerning the property
  - Street address
  - Legal description (section, lot, block)
- Information about reporting person
  - Full legal name
  - Category under the waterfall
  - Business address
- Information about seller/transferor
  - If individual: Full legal name, date of birth, current residential address and IRS TIN
  - If Entity: Full legal name, DBA, current business address, TIN or foreign equivalent
  - If Trust: Full name of trust as listed on trust agreement; date trust agreement executed, TIN (if available) and legal name, address and TIN for Trustee

# Transferee/buyer Info

- Entities
  - Legal Name of entity & DBA
  - Current address for principal place of business
  - Unique identifying number either IRS TIN, foreign equivalent or entity registration number
- Beneficial owner and Signor info
  - Full legal name
  - Date of birth
  - Current residential address
  - Citizenship
  - Unique ID (either IRS TIN, foreign equivalent)



# Transferee/Buyer Info

- Trust
  - Full name as shown on trust instrument
  - Date instrument is executed
  - Street address for trust administration
  - Unique identifying number either IRS TIN, foreign equivalent or entity registration number
  - Whether trust is revocable
- Trustee info
  - Legal name, any DBA, address, unique ID
- Beneficial Owner info
  - Legal name, date of birth, residential address, citizenship, unique ID
  - How do they qualify as a beneficial owner
- Signor info
  - Same as trustee info plus indication of capacity

# Beneficial Owners

- Same definition as under Corporate Transparency Act
  - any individual who, directly or indirectly, either exercises substantial or owns or controls at least 25 percent of the ownership interests
  - Substantial control includes
    - Senior officer
    - Authority to appoint board or senior officers
    - Directs decision making on important financial decisions including transfers of assets
- For Trusts:
  - Trustee
  - Beneficiary that is the SOLE recipient of income/principal
  - Grantor/settlor under a revocable trust
  - If an entity holds one of the covered positions, then the BO of that entity
- Both for profit and non profit entities or trusts are covered

## CERTIFICATION OF BENEFICIAL OWNER(S)

The information contained in this Certification is sought pursuant to Section 1020.230 of Title 31 of the United States Code of Federal Regulations (31 CFR 1020.230).

All persons opening an account on behalf of a legal entity must provide the following information:

1. Last Name of Natural Person Opening Account	2. First Name	3. Middle Initial	3a. Title
4. Name and type of Legal Entity for Which the Account is Being Opened			
4a. Legal Entity Address	4b. City	4c. State	4d. ZIP/Postal Code

### SECTION I

(To add additional individuals, see page 3)

Please provide the following information for an individual(s), if any, who, directly or indirectly, through any contract arrangement, understanding, relationship, or otherwise owns 25% or more of the equity interests of the legal entity listed above. Check here  if no individual meets this definition and complete Section II.

5. Last Name	6. First Name	7. M.I.	8. Date of birth (MM/DD/YYYY)
9. Address	10. City	11. State	12. ZIP/Postal Code
13. Country	14. SSN (U.S. Persons)	15. For Non-U.S. persons (SSN, Passport Number or other similar identification number)	
15a. Country of issuance:			

Note: In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

### SECTION II

Please provide the following information for an individual with significant responsibility for managing or directing the entity, including, an executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or Any other individual who regularly performs similar functions.

16. Last Name	17. First Name	18. M.I.	18a. Title
19. Date of birth (MM/DD/YYYY)	20. Address	21. City	22. State
23. ZIP/Postal Code	24. Country	25. SSN (U.S. Persons)	26. For Non-U.S. persons (SSN, Passport Number or similar identification number)
26a. Country of issuance:			

Note: In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

I, \_\_\_\_\_ (name of person opening account), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(MM/DD/YYYY)

# How to collect info

Rule allows reporting person to collect information from the transferee as long as they get a written certification of the information

# Payments information

- Total purchase price
  - Includes any amount paid outside of closing
- Each payment by Transferee to the settlement agent
  - Amount of payment
  - Method of payment (wire, ACH, certified check, etc.)
  - Name of financial institution payment was drawn on and the account number
  - Name of any payor on the wire or check if payor is not the transferee
- Info on if there is any private or hard money lending

# Impact on title business

# FinCEN Estimate

- First Year costs: between \$267.3 million and \$476.2 million
  - Estimates 75 minutes for initial training per staff person
- Each year costs: between \$245.0 million and \$453.9 million.
  - Estimates 850,000 filings per year
  - Estimates 4,604,167 hours of staff time to issue reports per year
  - Estimates 30 minutes annually of training
- Five year recordkeeping requirement

# Questions for regulators to think about

- If not much of this data is already collected by title agents today, how are they going to obtain?
- At what point in their workflow will you begin collecting information?
- How many additional hours will this add to each transaction?
- Given scope of data request will we see an increase in customer push back?  
Customer complaints?
- How will these additional expenses flow into data calls?
- How will examinations on this rule work?

# Questions?



The background features three large, 3D-rendered abstract shapes. On the left is a blue shape with a rounded top and a shadow. In the center is an orange shape with a flat top and a shadow. On the right is a pink shape with a curved top and a shadow. The shapes are layered, with the orange one in front of the blue one, and the pink one to the right. The text 'Thank You' is centered over these shapes.

**Thank You**