

ALTA BEST PRACTICES

Concerned with Vendor Risk Management?

FINALLY, A SOLUTION FOR LENDERS



Introduction

For many years, the lending community has been subject to statutory and regulatory obligations to protect their customers' nonpublic, personal information. However, the Consumer Financial Protection Bureau (CFPB) recently released Bulletin 2012-03, which restated and further emphasized the importance of those obligations, especially in the context of banks' relationships with third-party vendors—such as those providing title insurance and settlement services to a lender's clients. Since the CFPB has developed a reputation for levying huge fines against those who fail to comply with its rules, and has already started auditing mortgage lenders for third-party vendor risk-management compliance, many compliance officers have responded by increasing their efforts to perform due diligence on title companies. The type of due diligence used has been inconsistent within the industry, with some lenders asking vendors to complete questionnaires, others requesting vendors to submit their policies and procedures, and still others conducting interviews and on-site visits.

This due-diligence process has proven to be burdensome and inefficient for the lender and the title company. While the due-diligence approach provides some level of assurance to the lender, the self-reporting approach still carries significant risk – and this risk can be costly. In 2014, the CFPB obtained approximately \$1.9 billion in restitution for U.S. consumers, while imposing approximately \$35 million in civil monetary penalties.¹

“There are a number of title and settlement services companies out there claiming to be ‘certified’ in ALTA’s Best Practices, but a number of those certifications are either self-proclaimed or provided by third parties that lack the credentials of an established accounting firm. We chose PYA because they are one of the first qualified firms to offer a rigorous certification process and because of their experience working with settlement services companies, ALTA’s Best Practices and CFPB regulations. Our mortgage lending clients have already provided an extremely favorable response to our work with PYA and the overall certification process.”

— Angela Murin, President, Commonwealth USA Settlements, LLC

¹ CFPB – 2014 in Review...and What's Ahead for 2015 by Gerald Sachs, Kevin Petrasic, and Lawrence Kaplan

The Title Industry's Response

In response, the American Land Title Association (ALTA)—the title industry's national trade association since 1907—stepped up to help its approximately 5,000 members (title insurance companies, title agents, independent abstractors, title searchers, and attorneys) and the title industry as a whole. ALTA's solution was to establish a “best practices” framework to assist title companies with satisfying their responsibility to clients,

underwriters, banks, and mortgage lenders. Beyond the establishment of these voluntary best practices, ALTA also has proposed that title companies obtain certification by an independent third party to demonstrate the title company's compliance with ALTA Best Practices.

“Wells Fargo supports ALTA's Best Practices, and considers them to be guidelines for sound business practices that should ideally already be in place for businesses providing title and closing services for our customers.”

— Wells Fargo announced in its Settlement Agent Communications issued March 6, 2014

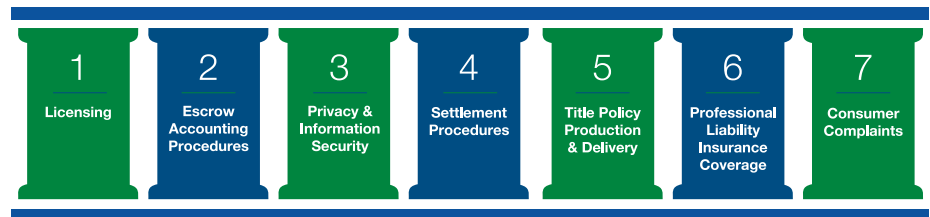
At least one lender is on record as requiring its closing agents to be ALTA Best Practices Certified by July 31, 2015. To assist lenders in understanding the ALTA Best Practices Framework, PYA has prepared the following summary. This paper will provide information about ALTA's designation of seven important areas of a title professional's business practice, referred to as Best Practice “pillars,” and the procedures that must

be followed in order for an organization to be in compliance with the Best Practices Framework. Also included are possible benefits to lenders of requiring ALTA Best Practices Certification and an outline of ALTA's Certification Package.

ALTA Best Practices Framework

The good news is that, while the development of the ALTA Best Practices Framework (ALTA Best Practices or Best Practices) is new to the industry, from an operational standpoint, many title insurance and settlement companies already have been applying similar

standards to satisfy their responsibilities to underwriters. Best Practices initially requires an organization to prepare a written set of policies and procedures that address each of the seven pillars of Best Practices as outlined by ALTA:



1. Licensing

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

2. Escrow Accounting Procedures

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

3. Privacy and Information Security

Adopt and maintain a written privacy and information security program to protect non-public personal information as required by local, state, and federal law.

4. Settlement Procedures

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

5. Title Policy Production & Delivery

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

6. Professional Liability Insurance Coverage

Maintain appropriate professional liability insurance and fidelity coverage.

7. Consumer Complaints

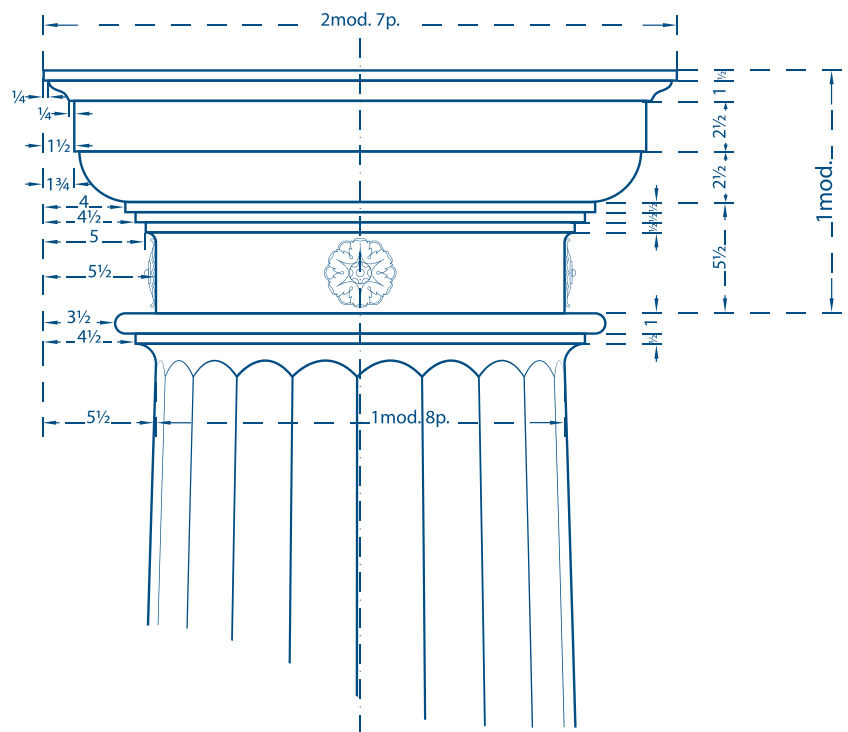
Adopt and maintain procedures for resolving consumer complaints.

In helping title companies develop their own approach to Best Practices, PYA has observed that most organizations either fail to have sufficient written documentation within their policies and procedures that cover all seven pillars, or they do not maintain records of their compliance with these self-imposed requirements.

Once an organization has developed, and is actually implementing, its policies and procedures in compliance with the Best Practices Framework, it can take advantage of the final step in the ALTA Best Practices program, i.e., “certification.” The certification process should be performed by an independent third party – someone whom the lender trusts and with whom there is no conflict of interest that could bias his or her objective opinion of how an organization operates. Because of the relationship that exists between a title agent and its underwriter, most lenders do not accept assurances provided by a title insurance underwriter as a truly independent third party. On the other hand, CPA firms routinely provide independent financial and compliance assessments on many different lines of business, and banks routinely accept their opinions.

The purpose of the certification is to provide lenders with objective evidence that the day-to-day operations of the organization have been independently assessed and found to be in compliance with ALTA Best Practices. This independent, third-party certification is intended to be a desirable benefit to the lending industry. Certification from a trusted, independent third party would aid in your vendor due-diligence efforts and allow you to avoid the necessity of conducting your own assessment of that organization, saving you considerable time and effort. The following section describes the assessment procedures used to award certification.

ALTA Best Practices Framework



ALTA Best Practices Assessment Procedures

Although the CFPB and other government regulators are clear about the obligation of lenders to actively supervise all of their third-party service providers, neither the regulations nor issued guidance letters provide details about any standardized method for verifying an organization's compliance with handling the lender's activities. Therefore, the burden falls on mortgage lenders to ultimately determine what is deemed acceptable under a self-regulatory umbrella. Since the CFPB has made it clear that mortgage lenders have direct liability for all actions of the third parties they employ, it is critical that you seek an appropriate level of assurance that your service providers are compliant with all laws and regulations imposed on lenders. This "assurance of compliance" is what you have been seeking through your vendor due-diligence processes. Unfortunately, this approach requires you to engage your internal staff in evaluating each of the responses provided by the title agents who respond to your requests. This approach also subjects the title agent to the requirement to individually respond to multiple lender requests for "assurance of compliance."

As an alternative, ALTA has developed another approach designed to provide you with what is needed, but at the same time, lessen the workload on both you and the title agent. The ALTA Best Practices program provides title agents with straightforward guidance on what steps they should be employing in their

day-to-day operations. But to meet lender requirements, an integral part of the program involves a uniform set of standard assessment procedures, which are used by a qualified, independent third party engaged by the title company, to evaluate the settlement servicing provider's actual compliance with Best Practices. The assessment procedures provide detailed testing requirements for determining compliance with each of the seven areas described previously.

While a portion of the assessment can be conducted remotely, in order to properly complete the assessment procedures, the third party must perform an on-site visit to physically review a sample of the title professional's files, verify physical security measures are in place, and conduct appropriate interviews with staff. This on-site assessment of compliance with the title professional's written policies and procedures makes this program far superior to the typical lender approach of only requesting a copy of the policies and procedures. At the completion of the testing, the third party will provide a "pass" or "fail" certificate to the title company based on the results of the assessment and determination of compliance. ALTA recommends that assessments be updated every two years.

ALTA Best Practices Assessment Procedures (cont.)

ALTA's guidelines for confirming compliance with Best Practices are broad in certain respects. Although ALTA does not require that a certified public accounting (CPA) firm performs the assessment procedures, many mortgage lenders and title agents are turning to CPA firms for assistance with Best Practices. The American Institute of CPA's (AICPA) released Technical Questions and Answers about Best Practices that provide non-authoritative guidance to accounting practitioners serving title and settlement agents. The AICPA guidance describes four types of engagements that accounting practitioners may perform: examinations, reviews, agreed-upon procedures, and consulting engagements. PYA provides all four types of engagements to, and on behalf of, title and settlement agents. In addition to these four engagements, some mortgage lenders also may consider accepting a self-certification from a title agent. The following table summarizes the differences between the engagement types.

CHART REFERENCES:

- ¹ Performed in accordance with American Institute of Certified Public Accountants Attest Standards.
- ² Performed in accordance with American Institute of Certified Public Accountants Consulting Services Standards.
- ³ AICPA Technical Questions and Answers do not specifically mention SOC 2 (SSAE16) reports, but some lenders have requested this type of engagement.
- ⁴ Gramm-Leach-Bliley Act (GLBA) testing is the same approach used by lenders to demonstrate information security compliance to regulators.
- ⁵ Optimized is defined by ALTA within the Best Practices Framework version 2.5, dated October 7, 2016.
- ⁶ PYA can assist clients seeking self-certification.

Engagement Type	Engagement Pricing	Activities Performed by a Third Party												
		Read relevant policies & procedures	Make inquiries of appropriate personnel	Inspect documents & records	Onsite visit	Substantive testing of policies & procedures	Observation of Best Practices implementation	Assessment of GLBA implementation ⁴	Assessment conclusion per ALTA Framework	Attest opinion on management's assertion	Assessment performed by PYA			
SOC 2 (SSAE16) ³ or Examination ¹	\$\$\$\$\$	√	√	√	√	√	√	Optional	Optional	√	√		Highest level of assurance. Extent of testing and sample sizes determined on a discretionary basis by the accounting practitioner in relation to the practitioner's assessed risk as to expressing an opinion on management's assertion. Can only be performed by a CPA. Examiner's opinion could be "clean," "adverse," or otherwise modified as appropriate.	
Certification ²	\$\$	√	√	√	√	√	√	Optional	√	Optional		√	Engagement is based on ALTA Best Practices Assessment criteria established in ALTA Best Practices Framework. Result is an assessment conclusion based on ALTA's definition of "Optimized." ⁵	
Agreed-Upon Procedures ¹	\$\$\$	√	√	√	√	√	√						√	Title agent and CPA agree to a set of procedures that meet the needs of the title agent. Engagement does not result in an opinion or an assessment conclusion.
Review ¹	\$	√	√										√	A review is substantially less in scope than an examination or certification and is limited to reading relevant policies and procedures and making inquiries - no observation or substantive testing required.
Self-Certification	N/A												√ ⁶	No level of assurance from a third party. Self-assessments may lack objectivity.

ALTA Best Practices Certification Package

Regardless of the engagement type, lenders should expect to receive the ALTA Certification Package to demonstrate that title professional vendors have verified compliance with Best Practices. The three-part package includes the following elements:



Are ALTA Best Practices a Requirement for Title Companies?

The ALTA Best Practices Framework started out – as the name implies – as best practices. However, because the Best Practices Framework, and specifically the independent third-party certification, provides such a great solution for banks and other mortgage lenders challenged with vendor due diligence, the Best Practices Framework is quickly evolving into an industry standard. The banking and mortgage industries will ultimately determine how

quickly the Best Practices Certification becomes the preferred method of performing vendor due diligence for a title company. With Wells Fargo and other large lenders publicly expressing their support for the Best Practices Framework, we anticipate more and more lenders to convey their support. This expectation will lead more title company vendors to seek certification.

PYA is a Leading Provider for ALTA Best Practices Process Development, Evaluation, and Certification

For more information regarding how PYA is working with lending institutions to develop vendor risk-management processes that make sense for the banking and title industries, visit

www.pyabestpractices.com

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All can be reached at (800) 270.9629.

“[PYA’s] friendly and knowledgeable persistence led our small office in developing and applying procedures to accomplish our goal of implementing and receiving certification of ALTA Best Practices.”

— Rick Beeson, co-founder Attorney, Brandt and Beeson, PC.

PYA assists title companies with the development of policies and procedures consistent with ALTA Best Practices, including evaluation of previously prepared policies and procedures for compliance with the seven pillars, as well as independent assessment of operational processes, written policies, and procedures for the purpose of certification.

For more than three decades, PYA has been a trusted resource for our clients as we deliver comprehensive advisory, compliance, assurance, and tax services. PYA is also well-versed in the complex regulatory environment of the financial institutions industry. As such, we have a unique understanding of the issues surrounding third-party-vendor risk management.

As a public accounting firm, PYA is required to go through a peer review process to validate compliance with accounting industry standards and our policies and procedures related to quality assurance. Adherence to the accounting industry’s rigorous standards and our responsiveness to our clients have resulted in our becoming a trusted business advisor for the title and banking industries.

