



THE NC CONNECTION

An Investors Title Publication

We Know North Carolina.

Your Real Estate Practice: Is it Time for a Checkup?

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VP—Risk Management



Take Care of Yourself and Your Real Estate Practice.

Nobody really likes to go to the doctor. There is always something else that we would rather do. Ultimately we go for many reasons. We go because we want to make sure that we are healthy or want to get healthy. Sometimes we go at the behest of a loved one. We send our kids to the doctor to get a physical so they can attend school or a camp. All of these reasons are good ones, but whatever the reason, I think we can all agree that a

regular checkup should be a part of our personal health routine .

But what about our professional health? We are all so busy that while we have found time to get ourselves personally checked out, we haven't taken the time to give our real estate practice a checkup. We lack the aforementioned motives to do so. Closings are clipping along, the trust account is balanced and reconciled, and, overall, our practice is feeling healthy. It now appears that federal regulation is giving us that motive. In April 2012, the Consumer Financial Protection Bureau (CFPB) issued a three-page memorandum ("[CFPB Memo](#)") that puts banks on notice that they have "legal responsibility" to "oversee their business relationships with service providers..." In much the same way that you had to have an annual physical from a doctor to enroll in the first grade or college, the CFPB asked the supervised banks to give their service providers a metaphorical "checkup."

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Real Estate Attorneys Are Third-Party Service Providers

The CFPB Memo specifically singles out service providers as: “. . . any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service.” In this definition the bank is the covered person and for purposes of this article, we will focus on those service providers that have the most direct impact on real estate transactions in the state of North Carolina – the real estate attorney. While it is not clear whether the real estate attorney was the specially intended recipient of this new scrutiny, it is clear that they fall within the current definition of “service provider.”

CFPB Recognizes Need for Third-Party Service Providers

The CFPB Memo acknowledges that banks use and/or allow the use of third-party service providers, such as real estate attorneys, as an appropriate and necessary business decision. The fact that the CFPB acknowledges and approves the use of third-party service providers is very important, as it shows that the CFPB does not intend to threaten the role of the attorney in the closing process. The CFPB, however, has asked the banks to look at these relationships and make sure that the bank is working with trusted, ethical professionals. The CFPB

wants banks to use and oversee service providers “in a manner that ensures compliance with federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm. The CFPB’s exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.” The CFPB Memo sent a shockwave through the lending industry, title industry, and legal industry as banks can now be fined or sued by the CFPB for the activities of their non-compliant service providers.

CFPB Sets Expectations

The CFPB Memo says that supervised banks are expected to:

- Conduct thorough **due diligence** to verify that the service provider understands and is capable of complying with the law;
- Request and **review the service provider’s policies**, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees who have consumer contact or compliance responsibilities;
- Include in the **contract with the service provider clear expectations about compliance**, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities;
- **Establish internal controls** and on-going monitoring to determine whether the service provider (together with

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their employees) is **complying with the law**; and

- **Take prompt action** to address fully any problems identified through the monitoring process.

The CFPB gave these broad examples of expectations without any defined way to measure compliance. The CFPB did not try to define all of these metrics nor did the CFPB presume to tell the lending industry what is good enough. In reality, the CFPB merely stated that banks must *check out your service providers, including attorneys*. The CFPB, however, added “legal responsibility may lie with the supervised bank.” Since the CFPB Memo lacks detail on compliance with this new federal mandate, the American Land Title Association (“ALTA”) has stepped forward to provide direction by promulgating industry Best Practices which will assist the legal, title, and settlement industries in complying with the new expectations.

ALTA - Filling the Gap

In an effort to fill the gap left by the broad examples given in the CFPB’s memo, the ALTA Best Practices offer the title industry (title agents and settlement agents, including attorneys) guidance on how to be a trusted and ethical title professional in the new regulatory environment. In short, the ALTA Best Practices indicate what the standard business “checkup” should include. Further, the ALTA Best Practices provide a path to demonstrate that you are a trusted and ethical professional. Until now, attorneys have relied on referral and reputation. In recent years, cost of services has become a bigger factor in where the business goes. ALTA’s Best Practices tell the banks to know more about their attorneys than merely what they charge, as they help banks and service providers navigate the broad requirements of the CFPB Memo.

To help the banking industry verify compliance, ALTA has offered seven questions that each bank should ask its service providers. These seven standards called the **ALTA Best Practices** can be summarized with seven routine questions, which are:

ALTA Best Practice #1 - Licensing

Are they properly licensed?

ALTA Best Practice #2 - Escrow Account Controls

Do they have proper controls in place to safeguard the millions of dollars that flow through their trust accounts?

ALTA Best Practice #3 - Protect Confidential Info

Do they have proper controls in place to safeguard the bank customers’ personal information from identity theft and cyber fraud?

ALTA Best Practice #4 - Follow Federal & State Consumer Laws

Do they know and follow the consumer laws that are required to protect the bank’s customers?

ALTA Best Practice #5 - Deliver Policies on Time

Do they have procedures in place to make sure that title matters are concluded in a timely fashion?

ALTA Best Practice #6 - Maintain Appropriate Insurance

Do they maintain the appropriate levels of insurance to protect the bank’s interests and the bank customers’ interests in the event that things do not go according to plan?

ALTA Best Practice #7 - Address Consumer Complaints

Do they address the bank’s complaints and the bank customers’ complaints (if any) in a timely and professional manner?

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NC FUN FACTS

Carolina Tiger Rescue

Located near Pittsboro, NC, Carolina Tiger Rescue is a nonprofit wildlife sanctuary whose mission is saving and protecting wild cats in captivity and in the wild. More than 13,000 people visit Carolina Tiger Rescue each year, learning about the issues affecting wildcats through guided tours and field trips. Research projects at Carolina Tiger Rescue are assisting conservation efforts in the wild and providing valuable information to colleges. For more information, visit: carolinatigerrescue.org



Compliance with some of the ALTA Best Practices can be as simple as asking: “Is the attorney licensed by the North Carolina Bar?” Other Best Practices, such as Escrow Account Controls and Protection of Non-Public Personal Information, for example, are a little more complex. One thing upon which the attorney and the bank can both agree is that the client’s money and confidential information must be protected.

Until now, attorneys have relied exclusively upon the Bar to determine the standards for protecting client funds and client confidences. It appears that banks want to add a level of scrutiny above the current norms to fulfill their obligations under the CFPB Memo. While the situation is fluid and still unfolding, the supervised banks intend to require the service providers (including attorneys) to not only do a professional job but to demonstrate that they are doing a professional job. North Carolina attorneys have been trained in how to handle entrusted funds and confidential information; now they have the opportunity to demonstrate just how well this is accomplished in our state.

One Checkup Is Enough

ALTA has developed an assessment standard for the Best Practices so that all service providers, including attorneys, may earn a certification from one independent third party confirming they have substantially met the standards. ALTA took the lead by defining the expectations contained in the CFPB Memo and providing a way to measure compliance. Using compliant service providers will not eliminate the bank’s responsibility to perform due diligence and know their customers’ attorneys, but the certification answers a lot of due diligence questions for the bank without the expense of performing the due diligence themselves. Additionally, by attempting to eliminate the need for each bank to investigate each service provider and attorney, a unified single assessment should minimize costs and operational interference.

There is concern in the industry with how high the bar for compliance has been raised. Banks have expressed concern that their trusted attorneys will not be compliant and that, as a result, they will have to stop using them. This concern is shared by the real estate bar. While these

concerns are valid, with proper preparation the compliance standards are within reach. The first step is AWARENESS, the second is PREPARATION.

Conclusion

The CFPB Memo has heightened the focus supervised banks have on how they oversee their third-party service providers, including real estate attorneys. Multiple interests and influences are at play. The economic and regulatory landscape involves the CFPB, the banking industry, the title industry, the service providers, the attorneys and the state bar(s). The good news is that, in North Carolina, the real estate attorney is in the business of “client protection,” which is what the CFPB considers “consumer protection.” The members of the real estate bar, the banks, and the CFPB share a primary goal: protecting the consumer (the attorney’s client). Over the next few months, an understanding of how client protection may best be achieved will emerge. Certain industry groups are targeting a date for best practice implementation which is a year away, which would allow busy practitioners time to work through this process. Certain banks may ask for compliance sooner, however, so together we must be aware and prepare.

Investors Title believes that in North Carolina the best consumer protection is provided by the real estate attorney and has taken numerous steps to advocate for the necessary role of the attorney in the closing process. Investors Title has been engaged at the highest level in these national discussions from the ALTA Auditors Committee, to the ALTA Underwriter’s Committee, to the ALTA Best Practice Task Force itself. We are committed to staying abreast of developments in this area, sharing what we learn with our approved attorneys, and assisting our partners through any necessary transition. Our future communications will include sample provider policy templates as well as information on other best practice solutions. Our goal is to assist our approved attorneys by minimizing the time and expense associated with adopting any changes they choose to make. Continued awareness, education, and communication as to these ongoing developments is a necessity for all involved in the real estate closing process. Please look for future communications and do not hesitate to contact us with questions or requests for additional information you may have in the interim.

RISK MANAGEMENT SEMINAR SERIES



In our continued support of North Carolina approved attorneys and real estate paralegals, Investors Title is proud to announce our Risk Management Seminar Series through March 2014. Please check with your marketing representative for other seminar opportunities in your area.



What Does CFPB Stand For (and What the CFPB Will Not Stand For!)

Don't miss this important overview of the Consumer Financial Protection Bureau and what to expect once proposed regulatory changes become a reality.

3 hours CLE/CPE | \$50

Th August 15	Triangle - Cary	Embassy Suites Raleigh/Durham RTP
Tu August 20	Kill Devil Hills	Comfort Inn On the Ocean
W August 21	Greenville	City Hotel & Bistro
Th August 22	Wilmington	Hilton Wilmington Riverside
W September 4	Fayetteville	Holiday Inn Fayetteville-Bordeaux
Tu September 10	Greensboro	Joseph S. Koury Convention Center
W September 11	Charlotte	Crowne Plaza Charlotte Executive Park
Th September 12	Asheville	Renaissance Asheville

10th Annual Fall Gathering

The 10th Anniversary of Investors Title's premiere gathering of North Carolina attorneys!

6 hours CLE | attorneys only \$250

Fr & Sat Sept 27 & 28	Chapel Hill	The Rizzo Conference Center
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Attorney & Paralegal Risk Management Seminar

Save the date! Look for registration details in upcoming communications from Investors Title!

6 hours CLE/CPE | attorneys \$150 | paralegals \$50

Tu February 11, 2014	Greensboro	Joseph S. Koury Convention Center
W February 12, 2014	Charlotte	Crowne Plaza Charlotte Executive Park
Tu February 18, 2014	Cary	One Eleven Place
Tu March 11, 2014	Greenville	Hilton Greenville
W March 12, 2014	Kill Devil Hills	Comfort Inn On the Ocean
Th March 13, 2014	Wilmington	Hilton Wilmington Riverside
Tu March 18, 2014	Fayetteville	Holiday Inn Bordeaux
Th March 20, 2014	Asheville	Renaissance Asheville

www.liensnc.com

LiensNC



Investors Title congratulates LiensNC on winning the Interactive Media Outstanding Achievement award! LiensNC is working to continue to make revisions to the website to make it even more user friendly and expand the many uses of the site. Join us at [Fall Gathering](#) September 27-28 for a presentation on some of those updates. Stay tuned for future announcements!

More on This Topic



[Are You Ready?](#)

LiensNC helps closing attorneys quickly and easily determine which potential lien claimants have filed a Notice to Lien Agent to protect their lien rights on a Project Property. This information allows the closing attorney to determine from whom waivers and subordinations may be needed to protect their purchaser or lender clients at closing. In addition, attorneys representing builders or developers may find it helpful to monitor these filings throughout the life of a construction project.



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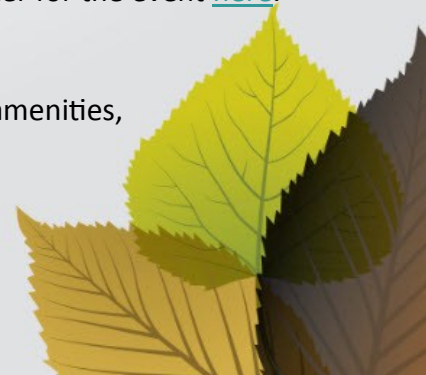
Investors Title is thrilled to be celebrating the **tenth anniversary** of Fall Gathering at one of the state's most beautiful retreat and conference settings – The [Rizzo Conference Center](#)!

Real estate attorneys are encouraged to enjoy a full slate of activities, including continuing education courses, a cocktail reception at the historic DuBose House, a pre-game tailgate party featuring your favorite North Carolina barbecue and fixings, and the UNC vs. ECU football game.

Click [here](#) to view all of the event information and to learn about the available courses. Register for the event [here](#).

Why Attend?

- The Rizzo provides the perfect setting for sharing and learning – executive education amenities, state of the art conference technology, and pastoral surroundings.
- Real property attorneys guide discussions on current real estate topics.
- Participants earn six hours of North Carolina CLE credit.
- Two ethics options are available, including one hour of substance abuse credit.
- The seminar format encourages interactive learning.
- Attendees share experiences with other North Carolina legal professionals.



On-Demand Education

nc.invtitle.com/ondemand

CLE/CPE CREDIT COURSES:

NC Mechanics Lien Law—Nuts and Bolts

The New Mechanics' Lien Law in NC

(Note: This course is an introduction and a precursor to the above 'Nuts and Bolts' course.)

1031 Exchange Basics: A Brief Primer

What Are We Gonna Do With Mama's Property?

Title Insurance Endorsements

(Commercial Transactions Focus)

Additional CPE and non-credit courses also available.



Investors Trust Company: *Charles Schwab v. McEntee*

In March, the North Carolina Court of Appeals issued an opinion essentially underscoring the importance of having retirement accounts with up-to-date beneficiary designations. The importance of that principle came in a case that developed after Alan McEntee died in September 2010. During life, McEntee had been married to Kelly Pecha

for eight years, but that relationship ended in 2004 when the couple divorced. As part of the divorce settlement, Kelly conveyed “any and all” rights in her husband’s IRA back to him. But McEntee never changed his beneficiary designation, even though he executed other estate-planning documents in 2008 that created a Living

Trust naming the American Diabetes Association as one of the primary remainder beneficiaries. Following McEntee’s death, Kelly notified Charles Schwab, the investment firm where the IRA was housed, “to claim ownership of the IRA and the proceeds to be paid therefrom.” The Personal Representative of McEntee’s estate objected, claiming that Kelly had previously surrendered all of her rights to the decedent’s IRA. After the trial court ordered Kelly and the Personal Representative to participate in an alternative dispute resolution, the two parties reached a settlement. But the American Diabetes Association filed a Motion to Intervene, arguing that it was a named trust beneficiary and that the settlement would substantially diminish its interest. The trial court approved the settlement, thereby denying the Association’s motion, and the appellate court affirmed. In reaching that result, the Court of Appeals concluded that “the Association’s interest in the interpleader action was adequately represented [by the] personal representative of the Estate....[so] the trial court did not err in denying the Association’s Motion to Intervene.”

--*Charles Schwab v. McEntee*, No. COA12-897, N.C. Ct. App. 3/5/13

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An RSS feed is a method to receive notifications of changes to the content of a webpage or blog. Set the subscription through your web browser and be notified of changes to content as they occur. You may choose to receive notifications through the web browser or an email service. You may also unsubscribe at any time.