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Upgrading Dad—Part 2

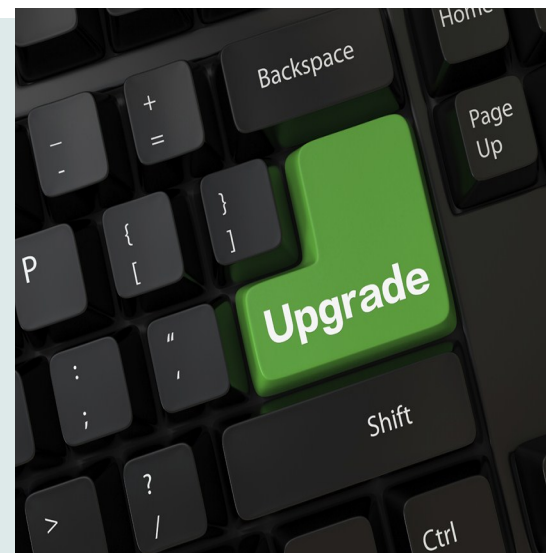


Nate James, Esq., Operations and Technology Officer, Title Attorney
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A few months ago, I wrote an article titled “Upgrading Dad” that detailed some technology improvements made to my dad’s law office ([Part 1](#)).

This follow-up article details additional technology and procedural changes made in order to comply with TRID requirements and ALTA Best Practices. To recap: my dad has been practicing law for 38 years, is a veteran of many regulatory shifts, but is often at a loss when changes require additional technology. I put many hours into getting his office up to speed, and he has graciously allowed me to share his story so that others may benefit.

Much has happened over the past few months. The Investors Title team has been hard at work spreading the good word of compliance to attorneys, realtors, paralegals, and other real estate professionals. Many road miles have been travelled and training hours dedicated to getting our valued partners up-to-speed on the changes. We are grateful to all who were able to attend our seminars related to these changes and hope every attendee found the education valuable. Through this entire



whirlwind, I managed to get the “old man” to make some changes around the office which, hopefully, will make it easier for him to comply with the new rules.

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Trust Account Reconciliation

The “Best Practices” promulgated by ALTA include guidelines for managing and reconciling an escrow/trust account involved in real estate transactions. Essentially, a real estate practitioner must perform a daily receipt and disbursement reconciliation in order to comply with ALTA’s guidelines. The provider must also perform a three-way reconciliation monthly.

A caveat to this provision is that the record of the reconciliation must be in an electronic format that can be made available to the real estate settlement provider’s chosen underwriter. A three-way reconciliation is a method to ensure that your general account ledger, your client ledgers, and your adjusted bank balance all match. Briefly, in order to perform a three-way reconciliation, an attorney must total all client ledgers, total the general account ledger, and prepare an adjusted bank balance. To prepare an adjusted bank balance, you should review the current bank statement, add any outstanding deposits, and then subtract any outstanding debits. The client ledger, general ledger, and adjusted bank balance must all match.

Furthermore, ALTA Best Practices advises that reconciliation should not be performed by an employee who has check signing authority. This separation of duties helps ensure that any malfeasance is caught. Services exist that assist real estate practitioners with performing three-way reconciliations and help ensure the separation of duties between check signing and reconciliation.

One such service is Investors Title’s iTracs® system. iTracs® provides a daily reconciliation of your trust account and shows all receipts and disbursements that occurred for the previous day. A record of this reconciliation is delivered to you via a daily email. Thus, a user of the iTracs® system has constant visibility on the status of their trust account. I wanted to ensure that my dad would have a much easier time performing compliant reconciliations. With my understanding of how iTracs® works, I knew that I wanted him to use the service.

Some considerations when setting up an iTracs® account is that iTracs® requires software that allows the service to write back into the trust accounting ledger. The purpose of this requirement is so that iTracs® can notate in the ledger when checks have cleared the trust account. For my dad’s office, this meant that we were no longer going to be able to use the same software to complete HUDs and CDFs. We were going to have to get him onto a modern closing software platform that included a trust accounting portion.

Another consideration when setting up an iTracs® account is that it is much easier to set up with a new trust account. This fact, coupled with the ALTA Best Practice of having a separate escrow/closing trust account, prompted us to open a new dedicated real estate trust account.

Trust Account Controls

My dad setup a new trust account with a local branch of a well-regarded North Carolina bank. The ALTA Best Practices



recommend certain security features be present on an escrow/closing account. Dad’s bank was easily able to accommodate all of our security requests. We set him up with an automated clearing house (ACH) block. This prevents ACH debits from posting to his account. We also set him up with reverse positive pay. Reverse positive pay presents him a list of checks or wires which occurred on the previous day. He then compares that list with his ledger of transactions to ensure that no out-of-the-ordinary transactions occurred. Finally, we secured the trust account with an international wire block. This block prevents anyone from wiring money out of the country. While occasionally the block may need to be lifted, the vast majority of his transactions are domestic. All of these combined features will greatly enhance the security of his trust account. The iTracs® manager, Jennifer Vaughn (jvaughn@invtitle.com), was of great assistance as we were exploring trust account options. She helped guide my dad through the features he may need in order to ensure that his new account would work with iTracs®.

We set the trust account up under a new and distinct name from his other trust account.

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Upgrading Dad... cont. from page 2

The reasoning for this setup is that we wanted the trust account to be clearly marked for closing/escrow services only. My dad now has two separate trust accounts. One trust account handles any general matter that may arise during the course of his legal work. The new trust account handles all closing and escrow related matters. The new trust account is also linked to his SoftPro® system and is the one that will be reconciled via iTracs®.

Closing Software

The last piece of the puzzle to upgrading my dad's technology was the addition of new closing document preparation software. New software was necessary in order to have a trust accounting ledger into which iTracs® could write. This feature allows my dad to cut checks from his closing software and then iTracs® can write back into the ledger generated by the software when those checks clear the bank. This enables iTracs® to perform its daily reconciliation tasks. There are several companies that make software compatible with iTracs®: AccuTitle, Landtech, Ramquest, and SoftPro® are a few of those companies.

Ultimately, after careful consideration, we chose to go with SoftPro® Standard. We bought one license for ProForms, ProTrust, Pro1099, and NC Bar Forms. SoftPro®, being a part of the Investors Title VIP program (invtitle.com/vip), offered a significant discount on all of those license fees. I was also the most familiar with SoftPro® out of all the software platforms. I had the great fortune of visiting the SoftPro® user conference in April. While there, I got hands-on training with the new version of SoftPro®. Furthermore, SoftPro® is headquartered in North Carolina. If my dad or I run in to any issues, local personnel from SoftPro® can easily help us remedy them.

Laura Bryan (laura.bryan@SoftProCorp.com), our SoftPro® sales rep, has been invaluable in helping my dad with his new software system. She scheduled several demos with us and was always available to answer any question or address any concerns he may have about the system. I know she has been in constant motion conducting webinars and assisting folks with the new changes. If you are considering SoftPro® at all,

please consider reaching out to Laura as she is a valuable resource.

Once purchased, SoftPro® schedules time to remotely install the software onto a settlement provider's system. This service is a benefit for folks like my dad because it means that he does not have to bother with installing the software on his computer himself or rely on in-house IT personnel to install. If you have an IT professional on staff, SoftPro® will work with that individual to ensure that the installation meets your IT standards.

A word of caution is in order. The software is complicated for the uninitiated; however, the more time you spend using the software, the more comfortable you become working in it. SoftPro® offers a myriad of training opportunities. Investors Title is also fortunate enough to have its own SoftPro® guru in Gina Webster (gwebster@invtitle.com). She conducted the SoftPro® training in the Investors Title TRID seminars. Gina has put together several classes on using SoftPro®.

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Insuring Entities cont. from page 3

She taught a course on how to complete a traditional HUD that is available through Investors Title's website. She also taught a course that shows users how to complete the new CDF form using SoftPro® that is also available. I highly encourage anyone new to SoftPro® to seek out both SoftPro's training resources and Investors Title's resources. Those web addresses are linked at the end

of this article. I recommend setting aside an uninterrupted half-day or even a full day in order to train completely on the new systems prior to live use.

Conclusion

I helped my dad through the process of updating his law office to comply with new laws and the ALTA Best Practices. It was not always an easy task,

but I enjoyed helping him. Again, I thank my dad for allowing me to share his story in such a candid fashion. I also thank Investors Title for giving me the flexibility to help him in the course of performing my responsibilities. I hope you find this information valuable. If you have any questions about anything I have written, please give me a call (800.326.4842) or send me an email (njames@invtitle.com).

Links:

iTracs®: invtitle.com/itracs

Jennifer Vaughn -
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VIP: invtitle.com/vip

SoftPro®: softprocorp.com

Laura Bryan -
Laura.Bryan@SoftProCorp.com
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Educational Opportunities:

Investors Title pre-recorded on-demand courses:

invtitle.com/events/nc

The SoftPro® videos are located under General/Non-Credit.

There are also several courses for CLE credit related to the TRID changes located under the CLE Credit Courses.

SoftPro®: softprotraining.com

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ALTA Best Practice
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Protection

Daily Reconciliation
& Reporting
Security

Expert-Level Support
Confidence

iTracs®

Escrow Reconciliation Services

iTracs® offers customized escrow accounting services with the following available features:

- Daily or monthly reconciliation options
- Automated matching of receipts and disbursements
- Three-way reconciliation
- Customized timely alerts of irregularities or critical errors
- Daily monitoring to help you detect potential problems before they become unrecoverable
- Consulting and training
- Audit assistance
- Cleaning up old problems and catching up prior months' reconciliations
- Integration with your bank's positive pay system
- Reverse positive pay
- Separation of conflicting duties

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■ **SoftPro® TRID (Closing Disclosure)**

Presenter: Gina Webster (non-credit - 80 min)

This course reviews ProForm updates related to preparing the Closing Disclosure Form and associated documents.

■ **Integrated Disclosures—General Rules (TRID Module I)**

Presenter: Holly Szczypinski, Esq. (1 hr CLE/CPE Gen)

This first segment of the three-part series will cover the rules associated with the new disclosures that were effective October 3rd, 2015.

■ **Integrated Disclosures—Loan Estimate (TRID Module II)**

Presenter: Jon Biggs, Esq. (1 hr CLE/CPE Gen)

This second segment of the three-part series will cover all of the relevant rules associated with the new Loan Estimate form.

■ **Integrated Disclosures—Closing Disclosure (TRID Module III)**

Presenter: Holly Szczypinski, Esq. (1 hr CLE/CPE Gen)

This third segment of the three-part series will cover the rules associated with the new Closing Disclosure.

■ **An Entity by Any Other Name**

Presenter: Jane Barkley, Esq. (1 hr CLE/CPE Gen)

A title insurance perspective on insuring real estate transactions involving legal entities such as corporations, limited liability companies, partnerships, and churches.

■ **Ethics and Standards of Practice (Commercial Transactions Focus)**

Presenter: Steve Brown, Esq. (1 hr CLE/CPE Ethics)

This presentation examines certain scenarios in which technology and response to a new regulatory environment may be changing standards of care for real estate attorneys in ways they may not recognize.

...and many more!



CLAIMS CORNER: Legal v. Actual Access—Which is Insured?

by Uta Zacharias, Esq.

Both owners' and lenders' title policies insure against "No right of access to or from the Land." Investors Title has certainly seen claims involving a lack of access to the insured land. The first question that must be answered is whether the lack of access is legal or actual. The operative words in the insured provision (Covered Risk No. 4) are "right of access". Does the insured have a legal right to access the property? If there is a legal right of access, then there is no loss under the policy.

What if the insured cannot access the property by means of a vehicle or on foot? Is that claim covered? What if accessing the property requires driving across the property of others, which the insured would rather not do? Is that a covered claim?

As stated, Covered Risk No. 4 insures the legal right to access the property and not the physical condition of access. The coverage provided for access does not take into consideration the adequacy of access nor the intended use. If the land abuts a public right of way, the insured has legal access. The fact that there is a guardrail running across the front of the property and the insured cannot drive a car onto the land does not afford him coverage under his title policy for lack of access.

In some states, a navigable river is considered the same as a public road. If you purchase land abutting a navigable river, you have legal access to your

property in those states. Even if the land is otherwise landlocked and there is no other pedestrian or vehicular access to your property, you still do not have a covered claim for access under your title policy for property abutting a navigable river in those states.

Sometimes, the only access to the insured property is across the land of another under the rights of an easement. When there is an easement allowing access, the easement needs to be searched and then given affirmative coverage under the policy. The attorney certifying title needs to determine that the access granted under the easement is sufficient for his client's intended use of the property, as the title policy does not insure the adequacy of the access granted under the easement. The title policy only insures that the access under the easement is legal.

For example, consider a property that is zoned for single family use. Your client intends to develop the property into townhouses. The access is via an easement. You must search the easement to assure your client that access will be sufficient even after the property is converted to townhouses. Your client's title policy will not



cover a claim for insufficient access under these circumstances, if access is denied once the townhouses are built, because the original easement contemplated a single-family property.

So why does the policy only insure legal access? The policy holder, as purchaser, has the duty to inspect the property. They are in the best position to determine if there is indeed physical access to the property. An attorney or title searcher can easily review the public land records to determine whether legal access exists; therefore, it makes sense that the policy would indemnify the insured if they are restricted legally from access to the property. The buyer, however, has the responsibility to determine the physical access.



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Opening Remarks: Steve Brown, Hunter Edwards, Dan Terry, and Morris Fine

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"...it's one of the best CLEs that I attend every year."

~Dan Portone - Costner Law Office, PLLC



Marketing Team (L-R): Judy Medford, Dawn Royle, Tracy Weekman, Beth Adams, Carol Faucette, Angie Willis, Kathy Baum, Jackie Thomas, and Lou Ann Craven. Note pictured: Rhonda Debruhl



Rizzo Conference Center

"The location was fantastic and the quality of course offerings was superb. I like this seminar above all others because of the relevance of information, the format which encourages discussion, and the chance to network with other real estate lawyers."

~William Christy - Stone & Christy, PA



Engaging Topics

"You are the best at helping your attorneys and providing hospitality. Always have been. Keep it up."

~Tom Steele - Pittman & Steele, PLLC

For the fifth year in a row at Fall Gathering, Investors Title has continued its "matching" campaign to raise funds for and create awareness of RELANC—Real Estate Lawyers Association of NC. Find out more about RELANC by visiting: relanc.com

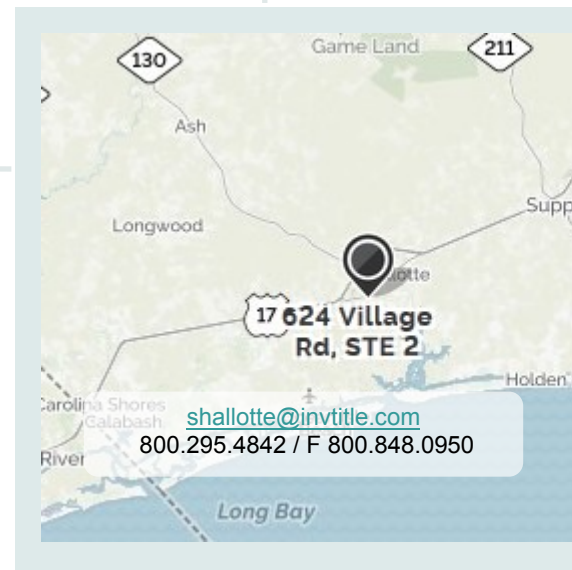
We look forward to seeing you in 2016!

Investors Title Branch Profile

Get to Know Your Local Office



Cynthia Long, office manager, and Connie Stowers, underwriter.



The Shallotte branch opened in March, 1994, and its current team members are Cynthia Long, office manager, who has been with Investors Title for more than 20 years, and Connie Stowers, underwriter, who was been with the company for more than 7 years. Angie Willis is the marketing manager.

Investors Trust: Fowler v. North Carolina Dept. Rev.

In a case that was extensively litigated, the North Carolina Court of Appeals has ruled that a couple did not owe state income and gift taxes because they had changed their domicile to Florida only a few weeks before they sold a business. The case developed after the North Carolina Department of Revenue (DOR) assessed taxes against Steve and Elizabeth Fowler. In 1984, Steve founded Commercial Grading, Inc., in North Carolina, and the business became a “highly successful enterprise.” In 2002, the couple bought a home in Naples for approximately \$1.6 million, and a year later, they purchased a home in Raleigh. But in 2004, Steve was diagnosed with kidney cancer, and the couple began extensive efforts to sell their business. In 2005, the couple bought a second, much larger house in Naples and began telling friends that they intended to move there permanently. The couple’s accountant suggested they take objective actions—such as retaining a local attorney and spending at least 183 days in Florida—to establish they had changed their domicile from North Carolina to Florida before selling the company because they would save

significant tax. On February 3, 2006, the couple sold their business for \$106 million.

Following that sale, the DOR assessed various taxes, and because they objected to the DOR’s assessments, the Fowlers filed suit. The trial court, agreeing with the couple, determined that the Fowlers had changed “their domicile from North Carolina to Florida effective as of January 20, 2006.” In fact, the court specifically found that their “intent to change domicile was not improper or rendered ineffective because the change was timed to maximize tax savings.” After an extensive analysis of the specific steps the couple took to change their domicile, the Court of Appeals agreed with the trial court and affirmed

--*Fowler v. North Carolina Dept. Rev.* No. COA14-1302, N.C. Ct. App. 8/4/15

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