



# **Best Practices Overview and Selected Issues**

Current Issues in a Real Estate Practice

# Keep in Mind

- There is still a lot of confusion out there.
- Best Practices and TRID are entirely separate initiatives.
- “Best Practices” is not a regulatory mandate; TRID is a regulatory mandate.
- No fines and penalties for not complying with Best Practices; fines and penalties for not complying with TRID.
- Lenders dictate Best Practices requirements and compliance; regulators dictate TRID requirements and compliance.
- Best Practices is “optional”; TRID is required.

# ALTA 7 “Pillars” of Best Practices

- Licensing
- Escrow and Trust Accounts
- Privacy and Info Security
- Recording and Pricing
- Title Policy Procedures
- Professional Liability Insurance
- Resolving Consumer Complaints

# Says Who?

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Consumer Financial Protection Bureau (CFPB) and other regulators?

American Land Title Association (ALTA)?

**LENDERS?**

# The Players

## CFPB and other regulators

- Lenders are responsible for the actions of third party vendors – translation, whatever a lender needs to do for oversight is the lender's choice, but ensuring closing agents follow BP may provide some defense to a regulatory action.

## ALTA

- Prepared the Best Practices standards based on input from regulators, lenders and real estate industry for use as a guide, not as a mandate.

## Lenders

- Almost across the board, lenders have indicated that they want their closing agents to be compliant with Best Practices ... and
- **THEY WANT THEIR CLOSING AGENTS TO BE ABLE TO PROVE COMPLIANCE, IF REQUESTED**

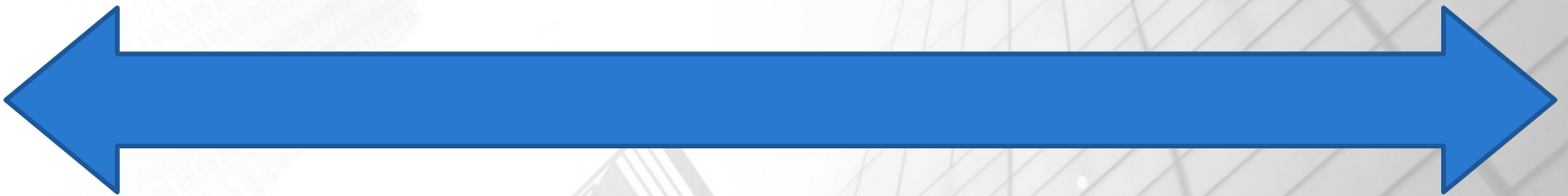
LENDERS WANT THEIR CLOSING AGENTS TO BE ABLE TO PROVE COMPLIANCE ... IF REQUESTED.

“Proof of compliance” - it’s a sliding scale

Copy of BPs

Self Certification

Third Party Certification



# Who Wants What?

## Proof of Compliance

### Copy of Best Practices

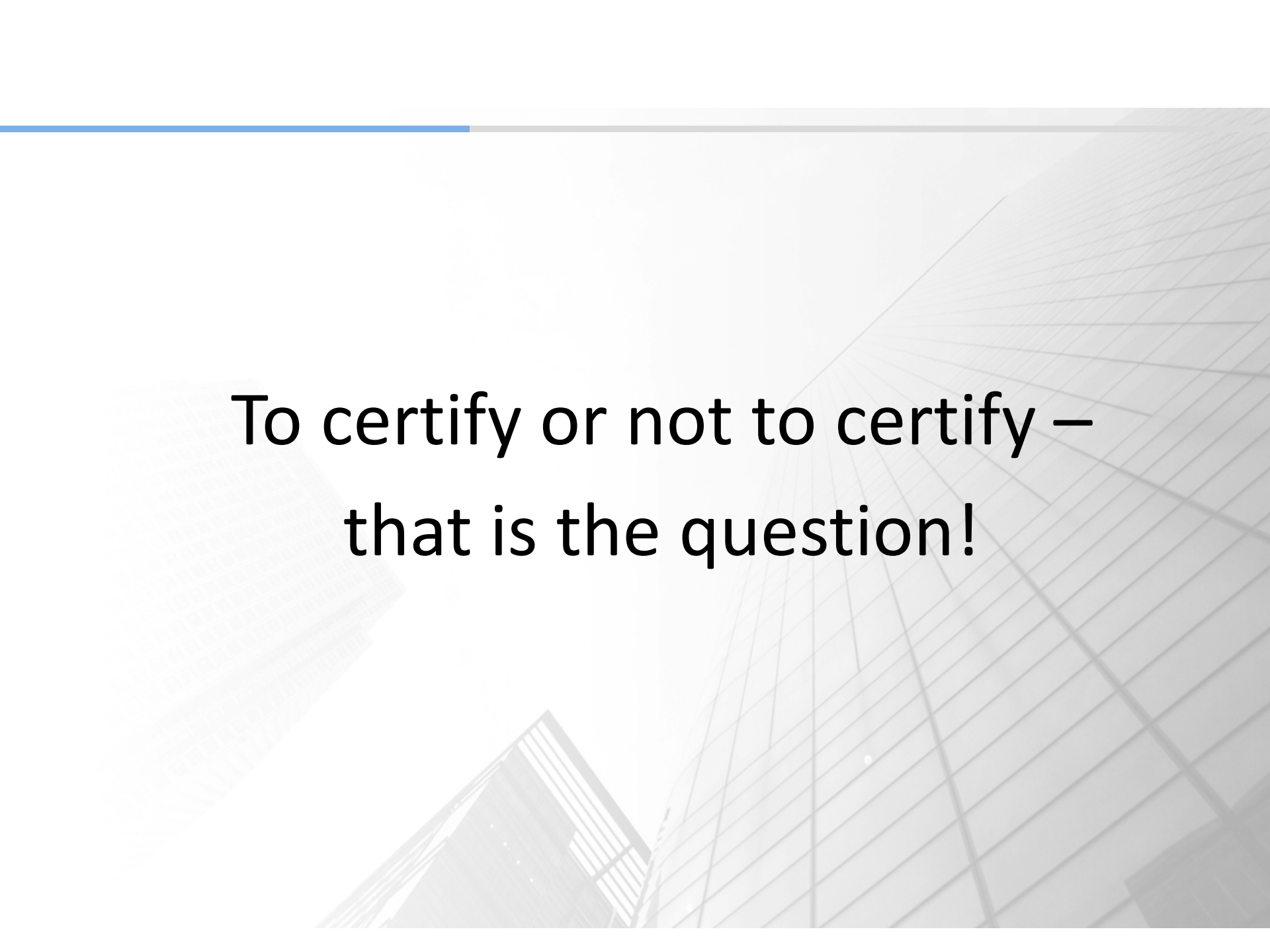
- Generally small lenders or community banks
- May simply ask “have you implemented Best Practices”
- May ask for a copy of your Best Practices
- May ask for proof of your following your Best Practices (i.e. copies of licenses, reconciliations etc.)
- May come look for themselves (i.e. clean desk, locked cabinets, locked doors, etc.)

### Self Certification

- Varies by lender
- Some lenders refer to it as self-assessment using the ALTA Assessment Procedures.
- Some lenders create their own requirements and request documents from agents (i.e. proof of E & O, licenses, underwriter good standing letter, sample reconciliation, positive pay, etc.)
- Some lenders simply require “We certify we will adhere to Best Practices.”

### Third Party Certification

- Six lenders to date
- Requirements vary by certifier
- Process can take from a week to several months depending on certifiers internal protocols and sample period
- Reported costs vary from \$1,750 to \$8,000 plus
- May incur costs to “come into compliance”
- Some lenders may verbally waive deadlines or grant exceptions.



To certify or not to certify –  
that is the question!



# Factors to Consider

- Are your lenders asking for it? If not now, will they later?
- Banks are not distinguishing between “commercial closers” and “residential closers” (confusion because of TRID).
- Cost of certification (including “retrofit” - as required by certifier – encryption, escrow account changes, building structure, filing systems, information security, building security etc.) ...
- ... versus Revenue
- Will it help your efficiency and Best Practices compliance?
- Market advantage or disadvantage

# What's the Certification Process?

- Memorialize your agency Best Practices – **WE HAVE THE TOOLS TO HELP** (StarsLink, templates, MVT personnel)
- Talk to various “certifiers” to find a “fit” (regional CPA firm? non-CPA entity? local CPA? – more on this below) – **ARE THEY ACCEPTED BY YOUR LENDERS?**
- Most do a preliminary assessment of your BPs and make recommendations (they want you to “pass”) via remote exchange of info (your policies, checklists, workbooks, interviews etc.)
- Back and forth to arrive “agreed upon” BPs (**\*USE YOURS IF YOU CAN\***)
- Agreed upon BPs in place for a period of time (varies but up to 90 days “sample period”)
- Audit Time – remote exchange of info, in person or both
- Pass, fail or “we’ll come back in thirty days”

# What Guidelines Do the Certifiers Follow?

## **\*It Depends\***

- **CPA's - AICPA Section 9540, Attest Engagement: American Land Title Association Best Practices Framework** (“Technical Questions and Answers” included in Seminar Materials – Exhibit “A”)
- “A practitioner may perform an engagement that the company would consider best suited to its circumstances. Such engagements may include attestation engagements (such as an examination, review, or an agreed-upon procedures engagement) or an engagement under CS section 100, Consulting Services: Definitions and Standards (AICPA, Professional Standards).”
- “Our examination procedures were not designed, however, to evaluate whether the aforementioned practices operated effectively to ensure compliance with the Federal and State Consumer Financial Laws or to evaluate the extent to which the Company or its employees have complied with federal or state laws, and we do not express an opinion or any other form of assurance thereon”
- “Based on our review, nothing came to our attention that caused us to believe that the Company’s title insurance and settlement practices, as of July 15, 20XX did not comply, in all material respects, with the American Land Title Association (ALTA) Best Practices based on the ALTA criteria.)
- **Non-CPA Certifiers - ALTA Best Practices Framework: Assessment Procedures dated July 19, 2013** (entire document provided in Seminar Materials – Exhibit “B”) (**\*USE YOURS IF YOU CAN\***)
- “XYZ Company performed the assessment procedures enumerated in the ALTA Best Practices Framework: Assessment Procedures dated July 19, 2013”
- “Our performance of such Procedures rendered a resulting grade of: PASS”

# Best Practices Getting the Most Attention

## Best Practice #2 Escrow Trust Accounts: (see Seminar Materials – Exhibit “C”)

“Appropriate and effective escrow internal controls and staff training help title and settlement companies meet client and legal requirements for the safeguarding of entrusted funds. These procedures ensure accuracy and minimize the exposure to loss of such funds.”

- Escrow funds and operating accounts are separately maintained.
- Monthly three-way reconciliations (see Seminar Materials – Exhibit “D”)
- Internal Controls (see Seminar Materials – Exhibit “E”)
- Segregation of duties (**IF POSSIBLE**) (see Seminar Materials – Exhibit “F”)
- Employee background checks (see Seminar Materials – Exhibit “G”)

# Best Practices Getting the Most Attention

## **Best Practice #3 Protection of Non-public Personal Information (NPI): (see Seminar Materials – Exhibit “H”)**

The requirement to protect non-public personal information (NPI) existed before Best Practices under the Gramm Leach Bliley Act (GLB). Best Practices just refocused the lending industry and regulators. The ALTA Best Practice #3 focuses on having procedures in place to address contact with NPI. (see Seminar Materials – Exhibits “I” and “J”)

- Physical Security: Restrict access to NPI to authorized employees.
- Network Security: Secure access to company information technology.
- Disposal: Dispose NPI in a manner that protects against unauthorized access or use.
- Disaster Management Plan: Document your procedures relating to internal or external security breaches.
- Training: Train your employees on the importance and seriousness of safeguarding NPI.
- Use of Service Providers: Know the security procedures of NPI for your service providers, such as independent IT service providers.
- Notification: If you suffer a security breach, describe the steps you will take to notify customers and law enforcement.

# A Few Parting Thoughts on Best Practices

- It's Important to memorialize your agency Best Practices, whether you are going to certify or not – **WE HAVE THE TOOLS TO HELP** (StarsLink, templates, MVT personnel).
- When you get a request from a lender – talk to them and see what they REALLY want.
- You probably are doing a lot of this already, you've just never written it down.
- Whatever a lender is asking for, call us, we can help because we have heard it before.
- A one or two person agency CAN do this – even certification.
- Certifications protocols/requirements vary SIGNIFICANTLY between certifiers.
- “We only do commercial work” doesn't = ignore Best Practices.
- Don't wait until the last minute.

# Questions & Answers



# Thank You!

## Contact

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