

STEWART N2K SERIES:

ETHICS

Presented:
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WHAT IS ETHICS?

The *Oxford English Dictionary* defines ethics as “the principles of human duty” and “rules or conduct recognized in certain departments of human life.”

The word ETHICS derives from the Greek word *ethikos* meaning moral, and *ethos* meaning character

- Albert Schweitzer said:
 - “Ethics is the name we give to our concern for good behavior. We feel an obligation to consider not only our own personal well-being, but also that of others and of human society as a whole.
 - Under Mr. Schweitzer’s definition the ETHICS TEST QUESTION is:
 - WOULD I WANT SOMEONE ELSE TO ACT IN THIS MANNER TOWARD ME?

ALTA PRINCIPLES OF FAIR CONDUCT

- The ALTA Consumer Initiative and Principles of Fair Conduct were established in 2007
- Industry Response
 - Over 100 companies adopted the principles
 - Over 25 state associations adopted the principles
 - Adopted by NJLTA November 7, 2007

ALTA Principles of Fair Conduct

- Principle #1
 - To engage in business practices that are lawful and consistent with a high standard of ethical behavior
- Principle #2
 - To encourage a culture of compliance within our organizations that supports federal and state laws that govern the title insurance business and these principles.
- Principle # 3
 - To treat consumers in a fair and ethical manner

ALTA Principles of Fair Conduct

- Principle #4
 - To provide consumers with timely and comprehensive information regarding their policies, services, products and prices, as this enables consumers to shop effectively among providers of title-related services
 - This is paramount to our industry. Transparency is the BEST business practice.
- Principle #5
 - To encourage and assist consumers in being educated purchasers of title insurance and title-related services.
 - This principle also goes for our attorney friends to educate their clients about title insurance what they are purchasing

Stewart Code of Business Conduct and Ethics

- Addresses responsibilities to our employees, policyholders, shareholders and the public and includes:
 - Prohibiting conflicts of interest (including protecting Company opportunities)
 - Protecting Stewart's confidential and our proprietary information and that of our policy holders.
 - **PRIVACY OF OUR CUSTOMERS IS STEWART'S HIGHEST PRIORITY**

Stewart Code of Business Conduct and Ethics

- Treating Stewart's employees, policyholders, shareholders and competitors fairly;
- Protection and proper use of company assets
- Compliance with laws, rules and regulations (including insider trading laws); and
- Encouraging the reporting of any unlawful or unethical behavior

Stewart Code of Business Conduct and Ethics

- In the final analysis, Stewart Associates are the guardians of Company ethics. While there are no universal rules, when in doubt....Ask

-
- Will my actions be ethical in every respect and fully comply with the law and with company's policies?
 - Will my actions have the appearance of impropriety?
 - Will my actions be questioned by supervisors, associates, clients, family and general public?
 - Am I trying to fool anyone, including myself, as to the propriety of my actions?

ETHICAL ACTION TEST

- Is it legal?
- Does it comply with our rules and regulations?
- For our attorney friends – how would the Bar Association view my actions?
- Is it in line with our organizational values?
- Will I be comfortable and guilt-free if I do it?
- Would the most ethical person I know do it?
- Would I do it to my family or friends?
- Would I feel OK if someone did it to me?

Unethical Justifications

- “Everyone else does it...”
- “they will never miss it...”
- “No one will know...”
- That’s close enough...”
 - This one everyone is faced with every single day when making decisions
- “Some rules were meant to be broken....”
 - This works if you are a lead singer of a rock band writing lyrics
- “Its not my job...”

Words of Wisdom for Attorneys....By Abraham Lincoln

- *There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave*

WHOSE ETHICS?

- CLOSING TABLE INTERESTS;
 - Buyer
 - Seller
 - Real Estate Broker
 - Mortgage Lender
 - Title Insurer
 - Attorney (may be multiple attorneys, representing multiple interested parties)

New Jersey Land Title Association Code of Ethics

- 1. Each member of the New Jersey Land Title Association shall be ever zealous to maintain and improve the quality of service in his chosen calling, and shall assume personal responsibility for maintaining the highest possible standards of business practices, and to those purposes shall pledge observance and furtherance of the letter and spirit of the following Code of Ethics.

- 1. Governed by the laws, customs and usage of the respective communities they serve, and with the realization that ready transferability results from accuracy and perfection of titles, members shall issue abstracts of title, examine titles to real property, report thereon, issue binders and policies of title insurance only after a complete and thorough investigation, founded on adequate records and learned examination thereof by themselves, their authorized attorneys or agents, and shall otherwise so conduct their business that the needs of their customers shall be of paramount importance.

- 2. Every member shall obtain and justifiably hold a reputation for honesty and integrity, always standing sponsor for his work intellectually and financially.
- 3. Ever striving to serve better the public interest, members shall endeavor (a) to encourage and maintain cooperation with each other, (b) to encourage and maintain cooperation with members of the bar, (c) to facilitate transfers of title, (d) to eliminate delays and unnecessary exceptions of title and (e) to make their services available in such a manner as will provide adequately for obligations assumed and afford a fair return for services rendered and capital employed.

- 4. Members shall support legislation which is in the public interest and will unburden real estate from unnecessary restrictions and restraints on alienation.
- 5. Members shall at all times engage in practices which will further the public interest and continue the stability of the Title Profession.
- 6. Members shall at all times strictly adhere to the laws of the United States of America and the State of New Jersey and any appurtenant regulations.

CASES AND STATUTES

- New Jersey State Bar Association v. Northern New Jersey Mortgage Associates, 32 N.J. 430 (1960) , 34 N.J. 301 (1961)
 - Court held Title Company was engaged in the practice of law which is...strictly confined to individual attorneys who have been licensed...”
 - A title company may **NOT** participate in the preparation of legal instruments or in the taking of other steps necessary to remove objection to title or cure defects therein.

- Cape May County Bar Association v. John Ludlam, 45 N.J. 121 (1965)
 - Holding: The drafting of legal instruments was prescribed to all but licensed attorneys and anyone who is NOT (other than the grantor) is not authorized to draft same.
- New Jersey State Bar Association v. New Jersey Association of Realtor Boards, 186 N.J. Super 391 (1982)
 - Licensed realtors shall be permitted to prepare contracts for the sale of residential 1-4 family homes or vacant 1 family lots in transactions in which they have a commission or fee interest.

- In re Opinion No. 26, 139 N.J. 323 (1995)
 - Closing without an attorney is not the unauthorized practice of law so long as the broker and title officer conform to specific conditions and provide specific disclosures
 - Disclosure language is intended to warn the consumer of the risks of proceeding without counsel.
 - A title company may clear standard title objections such as marital status and money liens paid at closing, but not easements covenants or other serious legal objections
 - The record clearly shows that the South Jersey practice has been conducted without any demonstrable harm to sellers or buyers, that those who participate do so at their own free will.

FOR TITLE INSURERS

- § 17:46B-13 - Dictates another extreme:
 - PROHIBITION AGAINST THE PRACTICE OF LAW
 - NO title insurance company and NO title insurance agent shall engage in the practice of law or render legal services, legal advice or legal opinions.
 - Nothing in this act shall be construed to permit or authorize acts by a title insurance company or title insurance agent which may now or hereafter be prohibited by the Supreme Court of the State of New Jersey.

CONFLICTS OF INTEREST

- Advisory Committee on Professional Ethics Appointed by the New Jersey Supreme Court
- **OPINION 495**
 - Facts; Attorney representing purchaser (and purchaser's mortgage lender) obtains title insurance through a title insurance agency in which the attorney owns an interest.
 - Does full disclosure resolve this apparent conflict?
 - Holding: These facts present a potential conflict so fraught with the danger of creating an appearance of impropriety that it could not be cured by the consent of parties.

Other Opinions

- OPINION 513 – Deals with conflicts of interests
- OPINION 612 – Deals with conflicts of interest between Attorneys and Title Insurance Agencies
- OPINION 639 – Deals with Attorneys owning and managing Bar Related Title Insurance Companies
- OPINON 688 – Deals with Attorney-owned Title Abstract Company providing Title Reports for Foreclosure Purposes

ALTA BEST PRACTICES

- **Best Practices**
- **Best Practice: Establish and maintain current License(s) as required to conduct the business of title insurance and settlement services.**
- **Purpose:** Maintaining state mandated insurance licenses and corporate registrations (as applicable) helps ensure the Company remains in good standing with the state.
- Procedures to meet this best practice:
- Establish and maintain applicable business License(s).

- Establish and maintain compliance with Licensing, Registration, or similar requirements with the applicable state regulatory department or agency.
- Establish and maintain appropriate compliance with ALTA's Policy Forms Licensing requirement.

- **Best Practice: Adopt and maintain appropriate written procedures and controls for Escrow Trust Accounts allowing for electronic verification of reconciliation.**
- **Purpose:** Appropriate and effective escrow controls and staff training help title and settlement companies meet client and legal requirements for the safeguarding of client funds. These procedures help ensure accuracy and minimize the exposure to loss of client funds. Settlement companies may engage outside contractors to conduct segregation of trust accounting duties.

- Procedures to meet this best practice:
- Escrow funds and operating accounts are separately maintained.
 - Escrow funds or other funds the Company maintains under a fiduciary duty to another are not commingled with the Company's operating account or an employee or manager's personal account.
- Escrow Trust Accounts are prepared with Trial Balances.
 - On at least a monthly basis, Escrow Trust Accounts are prepared with Trial Balances ("Three-Way Reconciliation"), listing all open escrow balances.

- Escrow Trust Accounts are reconciled.
 - On at least a daily basis, reconciliation of the receipts and disbursements of the Escrow Trust Account is performed
 - On at least a monthly basis, a Three-Way Reconciliation is performed reconciling the bank statement, check book and Trial Balances.
 - Segregation of duties is in place to help ensure the reliability of the reconciliation and reconciliations are conducted by someone other than those with signing authority.

- Results of the reconciliation are reviewed by management and are accessible electronically by the Company's contracted underwriter(s).
- Escrow Trust Accounts are properly identified.
 - Accounts are identified as “escrow” or “trust” accounts. Appropriate identification appears on all account-related documentation including bank statements, bank agreements, disbursement checks and deposit tickets.
- Outstanding file balances are documented.

- Transactions are conducted by authorized employees only.
 - Only those employees whose authority has been defined to authorize bank transactions may do so. Appropriate authorization levels are set by the Company and reviewed for updates annually. Former employees are immediately deleted as listed signatories on all bank accounts.
- Unless directed by the beneficial owner, Escrow Trust Accounts are maintained in Federally Insured Financial Institutions.

- Utilize Positive Pay or Reverse Positive Pay, Automated Clearing House blocks and international wire blocks, if available.
 - Background Checks are completed in the hiring process. At least every three years, obtain Background Checks going back five years for all employees who have access to customer funds.
- Ongoing training is conducted for employees in management of escrow funds and escrow accounting.

- **Best Practice: Adopt and maintain a written privacy and information security program to protect Non-public Personal Information as required by local, state and federal law.**

- **Purpose:** Federal and state laws (including the Gramm-Leach-Bliley Act) require title companies to develop a written information security program that describes the procedures they employ to protect Non-public Personal Information. The program must be appropriate to the Company's size and complexity, the nature and scope of the Company's activities, and the sensitivity of the customer information the Company handles. A Company evaluates and adjusts its program in light of relevant circumstances, including changes in the Company's business or operations, or the results of security testing and monitoring.

- Procedures to meet this best practice:
- Physical security of Non-public Personal Information.
 - Restrict access to Non-public Personal Information to authorized employees who have undergone Background Checks at hiring.
 - Prohibit or control the use of removable media.
 - Use only secure delivery methods when transmitting Non-public Personal Information.
- Network security of Non-public Personal Information.
 - Maintain and secure access to Company information technology

- Develop guidelines for the appropriate use of Company information technology.
- Ensure secure collection and transmission of Non-public Personal Information.
- Disposal of Non-public Personal Information.
 - Federal law requires companies that possess Non-public Personal Information for a business purpose to dispose of such information properly in a manner that protects against unauthorized access to or use of the information.
- Establish a disaster management plan.

- Appropriate management and training of employees to help ensure compliance with Company's information security program.
- Oversight of service providers to help ensure compliance with a Company's information security program.
 - Companies should take reasonable steps to select and retain service providers that are capable of appropriately safeguarding Non-public Personal Information.
- Audit and oversight procedures to help ensure compliance with Company's information security program.

- Companies should review their privacy and information security procedures to detect the potential for improper disclosure of confidential information.
- Notification of security breaches to customers and law enforcement.
 - Companies should post the privacy and information security program on their websites or provide program information directly to customers in another useable form. When a breach is detected, the Company should have a program to inform customers and law enforcement as required by law.

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- **Best Practice: Adopt standard real estate settlement procedures and policies that help ensure compliance with Federal and State Consumer Financial Laws as applicable to the Settlement process.**
- **Purpose:** Adopting appropriate policies and conducting ongoing employee training helps ensure the Company can meet state, federal, and contractual obligations governing the Settlement.
- Procedures to meet this best practice:
- Recording procedures.

- Review legal and contractual requirements to determine Company obligations to record documents and incorporate such requirements in its written procedures.
 - **Submit or ship documents for recording to the county recorder (or equivalent) or the person or entity responsible for recording within two (2) business days of the later of (i) the date of Settlement, or (ii) receipt by the Company if the Settlement is not performed by the Company.**
 - **Track shipments of documents for recording.**
 - **Ensure timely responses to recording rejections.**
 - **Addressing rejected recordings to prevent unnecessary delay.**
 - **Verify that recordation actually occurred and maintain a record of the recording information for the document(s).**

- Pricing procedures.
 - Maintain written procedures to help ensure that customers are charged the correct title insurance premium and other rates for services provided by the Company. These premiums and rates are determined by a mix of legal and contractual obligations.
 - Utilize rate manuals and online calculators, as appropriate, to help ensure correct fees are being charged for title insurance policy premiums, state-specific fees and endorsements.
 - Ensure discounted rates are calculated and charged when appropriate, including refinance or reissue rates.
 - Quality check files after Settlement to help ensure consumers were charged the company's established rates.

- **Best Practice:** Adopt and maintain written procedures related to title policy production, delivery, reporting and premium remittance.
- **Purpose:** Adopting appropriate procedures for the production, delivery, and remittance of title insurance policies helps ensure title companies can meet their legal and contractual obligations.
- Procedures to meet this best practice:

- Title policy production and delivery.
 - Title insurance policies are issued and delivered to customers in a timely manner to meet statutory, regulatory or contractual obligations.
 - Issue and deliver policies within thirty days of the later of (i) the date of Settlement, or (ii) the date that the terms and conditions of title insurance commitment are satisfied.
- Premium reporting and remittance.
 - Title insurance policies are reported and premiums are remitted to the underwriter in a timely manner to meet statutory, regulatory or contractual obligations.

- Report policies (including a copy of the policy) to underwriter by the last day of the month following the month in which the insured transaction was settled.
- Remit premiums to underwriter by the last day of the month following the month in which the insured transaction was settled.

- **Best Practice: Maintain appropriate professional liability insurance and fidelity coverage.**
- **Purpose:** Appropriate levels of professional liability insurance or errors and omissions insurance help ensure title agencies and settlement companies maintain the financial capacity to stand behind their professional services. In addition, state law and title insurance underwriting agreements may require a company to maintain professional liability insurance or errors and omissions insurance, fidelity coverage or surety bonds.

- Procedures to meet this best practice:
- The Company maintains professional liability insurance or errors and omissions insurance.
- The Company complies with requirements for professional liability insurance, errors and omissions insurance, fidelity coverage or surety bonds, as provided by state law or title insurance underwriting agreements.

- **Best Practice: Adopt and maintain written procedures for resolving consumer complaints.**
- **Purpose:** A process for receiving and addressing consumer complaints helps ensure reported instances of poor service or non-compliance do not go undiscovered.
- Procedures to meet this best practice:

- Consumer complaint intake, documentation and tracking.
 - Standard procedures for logging and resolving consumer complaints helps ensure consumers provide the company with sufficient information to understand the nature and scope of the complaint.
 - Develop a standard consumer complaint form that identifies information that connects the complaint to a specific transaction.
 - Set a single point of contact for consumer complaints.
 - Establish procedures for forwarding complaints to appropriate personnel.
 - Maintain a log of consumer complaints that includes whether and how the complaint was resolved.

Title Act- N.J.S.A. 17:46B-1

- Regulates Underwriters & Agents
 - Prohibition against practice of law
 - Mono Line Provisions
 - Must be a determination of insurability (not casualty)
 - Records maintained for 15 years
 - Funds maintained in an escrow account and “Good Funds” requirements

Title Act- N.J.S.A. 17:46B-10.1

- “Good Funds Law”
 - Title insurance producers are prohibited from disbursing funds representing closing or settlement proceeds of a real estate transaction unless they have deposited those funds in a separate trust or escrow account by cash, electronic wire transfer or certified, cashier’s teller’s or bank check or other collected funds, unless disbursement amount is \$1,000.00 or less

TITLE ACT - continued

- Rates, Charges and Forms
 - Must be approved by the Commissioner of Banking and Insurance
 - Satisfy the requirement by being a member of the New Jersey Rating Bureau
 - Can not deviate from filed rates

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Please mark your calendars:

OCTOBER N2K HOUR

Tuesday

October 9

10:00AM

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