March/April 2008

TitleNews

Official Publication of the American Land Title Association

2008 Legislative Forecast

Will Congress and federal agencies consider legislation affecting the land title industry?

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Standard & Poor's AA | Moody's A1 | Fitch Ratings AA- | Demotech A" | As of 1/08

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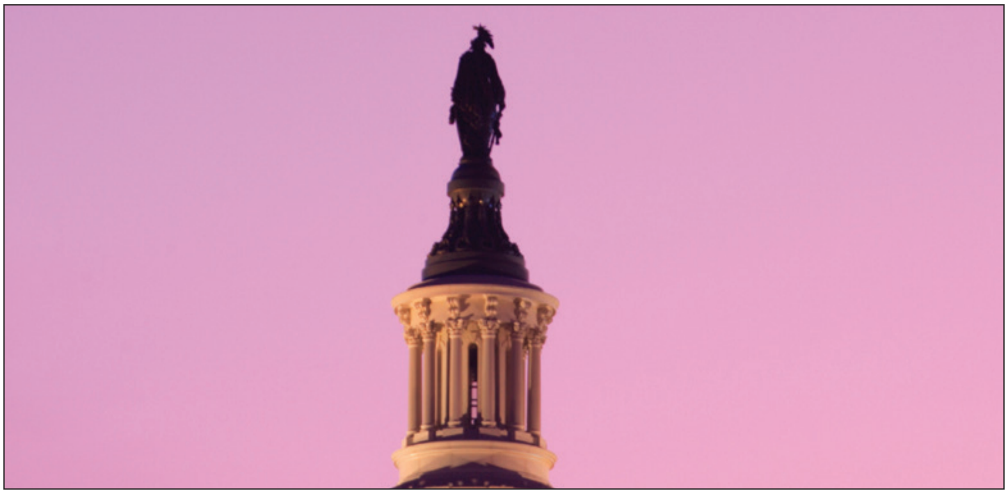

Features

Departments

calendar

ALTA EVENTS

Date	Event
March 10-12	2008 Federal Conference The Grand Hyatt, Washington, DC
April 13-15	2008 Tech Forum Mandalay Bay Resort & Casino, Las Vegas, NV
October 15-18	ALTA 2008 Annual Convention Grand Hyatt Kauai Resort & Spa Kauai, HI

STATE CONVENTIONS

April 3-5	Oklahoma
April 9-11	Tennessee
April 27-29	California, Hawaii, Nevada
May 1-4	Palmetto *(South Carolina)*
May 3-5	New Mexico
May 4-6	Iowa
June 1-4	New Jersey
June 5-7	Texas
June 5-8	Virginia
June 8-10	Wyoming
June 12-15	Pennsylvania
June 12-13	South Dakota
June 19-21	Arkansas
June 19-22	New England *(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)*
July 10-12	Illinois
July 10-12	Utah
July 19-22	Michigan
August 3-5	Idaho, Oregon, Washington
August 7-9	Montana
August 8-10	Kansas
August 14-16	North Carolina
August 21-23	Minnesota
August 23-24	Wisconsin
August 24-27	New York

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Anyone is invited to contribute articles, reports, and photographs concerning issues of the title industry. The Association, however, reserves the right to edit all material submitted. Editorials and articles are not statements of Association policy and do not necessarily reflect the opinions of the editor or the Association.

AMERICAN LAND TITLE ASSOCIATION

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Visit ALTA Home Page: www.alta.org • E-Mail Feedback to: service@alta.org

point of view

Crisis Management vs. Paradigm Shift

Over the years our industry has reacted effectively to the crises we have faced: media criticism, regulatory scrutiny, RESPA reform, mortgage impairment products, bank powers.

Today, because of the turmoil in the credit markets, the title industry is not the enemy in the eyes of media, legislative, and regulatory critics. We don't have an immediate crisis to react to, so we can go back to work and wait for the next crisis, right? WRONG!

Now is the time to be proactive; a paradigm shift, perhaps, for our industry. Let's mobilize our efforts and visit with our state regulators and promote the valuable services we provide.

Many state and federal legislators and regulators, as well as the presidential candidates, are calling for more transparency in the mortgage process. How can we help them? We are involved in virtually every mortgage loan made in the United States. There is an additional role for us somewhere here, and as an industry we have to be willing to consider a paradigm shift.

Wouldn't it be nice, in the future, to be viewed as an indispensable component to the real estate process? An industry lauded for its efforts to promote and protect the interests of consumers?

Our new CEO, Kurt Pfotenhauer, has some interesting ideas in this area, and I've asked him to convene a working group consisting of members from both the Agent and Underwriters Sections.

Recognizing the value of Membership

We have 3,200 members. That sounds good until you realize that, conservatively, there are an estimated 20,000 companies engaged in our business. Why are less than 20 percent members? What do we need to do to retain our 3,200 members and appeal to the others?

Our members see the value in our advocacy efforts, access to education, ALTA-adopted forms, networking opportunities, and conventions. Non-members either get these benefits without being a member (advocacy, forms) or look elsewhere for the service (education, networking, conventions).

That needs to change. Our goal should be 100 percent membership; any company engaged in our business should be a member of ALTA. Does that sound unrealistic? Consider the Realtors®; to be called a Realtor® you have to be a member of NAR. Consider the homebuilders; approximately 90 percent are members of NAHB. The goal may be high, but not unachievable. Besides, it's time to unburden the few who are supporting the many. Both NAR and NAHB have close affiliations with their state associations. Our industry will be stronger when ALTA and our state associations work more closely together.
What can we do to attract significantly more members? We need to make it meaningful to be a "member in good standing" of ALTA. Just as most people would not buy or sell their home without a licensed Realtor®, parties to a real estate transaction should not use a company that is not a member in good standing of ALTA.

– Gary L. Kermott

news

Adobe Acrobat Executive to Speak at ALTA Tech Forum

Chip Greenlee III, director, financial services industries for Adobe Systems Inc. will be the General Session speaker during ALTA's Tech Forum, April 13-15 at the Mandalay Bay Resort in Las Vegas.

The Adobe PDF format has become one of the most ubiquitous file formats since its release into the business marketplace. Greenlee will talk about significant advances and new applications of PDF and related technologies. Financial services firms around the world are using the new PDF and forms technologies to improve customer engagement and service levels, streamline and automate business processes, offer new services to customers, and improve operational efficiency.

See page 22 in this issue of *Title News* for information on the educational sessions during the Tech Forum. To learn more about the Tech Forum and to register, go to ALTA's home page and look for the Meetings box on the right-hand side.

ALTA to Offer CE/CLE Credits at Meetings

Beginning with the ALTA Federal Conference this March in Washington, DC, ALTA will begin offering CE/CLE credits for sessions during the meeting. Plans are underway to offer CE/CLE credits during the Tech Forum and Annual Convention as well. Look for information on this new member benefit in the brochures for each convention. For more information, contact Kevin Russell at *kevin_russell@alta.org or 800-787-2582 ext. 232.*

LTI Videos Available at Half Price

LTI is discontinuing the VHS format and, as a result, all VHS educational videos have been significantly reduced through April 21, 2008. Save money and stock up now while supplies last! This sale is applicable only to VHS purchases and is not available in CD-ROM/DVD format.

Titles Available	Member	Non-Mbr
The Principles of Title Searching	$23	$38
The Need for Land Title Services	$23	$38
Claims Awareness	$23	$38
Effective Employee Training for Different Size Offices	$18	$33
This Land Is My Land, That Land Is Your Land*	$70	$95
Behind the Scenes: A Look at the Settlement Process*	$33	$48
Closing Real Estate Transactions: Problem Solving HUD-1*	$33	$48

*Includes workbooks and printed materials.

To purchase the VHS tapes at 50% off, please send a check payable to The Land Title Institute, Inc. Indicate which videos you are purchasing and where to mail them. Mail your check to: The Land Title Institute, Inc. 1828 L Street, NW, Ste. 705 Washington, DC 20036 Or, call Kevin Russell, 800-787-2582 ext. 232 to purchase using a credit card. Sale orders are not available via the Internet/ ALTA Store.

More and More Adopt Principles of Fair Conduct

ALTA members have responded very favorably to adopting the Principles of Fair Conduct, part of the larger Title Industry Consumer Initiative, launched last fall in response to the 2007 GAO report on the industry.

The list of companies and state land title associations who have pledged to adopt the Principles of Fair Conduct grows every day. You can find a list of the companies who have adopted the Principles on ALTA's Web site.

Has your company adopted the Principles yet? If so, send an e-mail to Ed Miller at *ed@alta.org* to be listed with your peers on the ALTA Web site.

TIPAC Reaches for "The Stars"

You may have thought the Title Industry Political Action Committee (TIPAC) only reached out to those in Washington, DC, but TIPAC reaches for "The STARS" as well. "The STARS" are you, the members of the American Land Title Association. One hundred years strong and combating the forces around us – RESPA Reform, predatory lending, class action suits, HUD investigations and the list goes on . . .

We are an organization 3,200 members strong. In 2007, 507 of ALTA's members contributed over $148,000 to TIPAC. That amounts to under 20% of the title professionals belonging to ALTA contributing approximately $292 per "STAR."

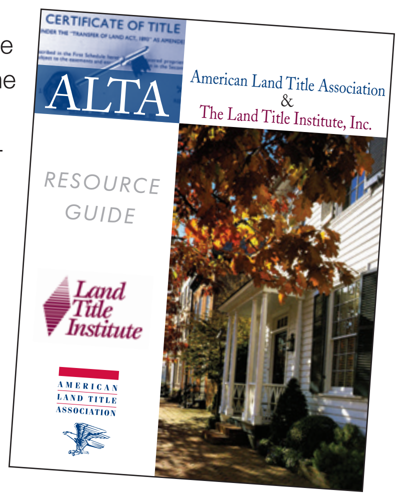
Why don't we have 3,200 "STARS?" If we did, with a $300 contribution, we would raise $960,000. Wow!

A 2008 TIPAC Goal of $200,000, which is a mere shadow of the above figure, has been set. You can contact John Voso, TIPAC Chair, at *jvoso@oldrepublictitle.com* or cell (216) 408-8866 if you would like to provide comments or suggestions regarding TIPAC. Visit our web site at www.alta.org/TIPAC or contact Charlene Nieman at 1-800-787-2582 ext. 233 or *charlene@alta.org* for more information on TIPAC. Thank you in advance to the "TheSTARS" of 2008.

Resources Available to Help You

ALTA has a variety of resources and research to help you in your business. Educational videos, online courses, marketing brochures, surveys and more are featured in the new ALTA Resource Guide. Here is a sample of the benefits we offer:

- *The Abstracter and Title Agent Annual Operations Survey* – This timely report includes information on staffing and types of business activities as well as a breakdown of average median revenues, operating expenses, personnel lists, salaries by position, and other operating statistics.
- *Title Insurance Regulator Survey* – This is a must-have for every title office, law firm and closing company. The survey contains all the pertinent information on how the title business is conducted in each state. The survey is currently being updated to include 2006-2007 information and will be released in early Spring.
- Title 101 On Line Course – Technically called Correspondence Course I, this on line course offers a basic understanding of the title industry and its industry-specific terminology. Perfect for new employees. After you have completed Course I, challenge yourself to the advanced Course II.



A hard copy of the ALTA Resource Guide was mailed to all members. If you did not receive a copy, you can send an e-mail to ***service@alta.org***, or access the Resource Guide on the ALTA Web site under "Publications and Products."

The 2008 Washington Legislative/Regulatory Forecast

With national attention turning to the elections, will Congress and federal agencies consider and take action on legislation affecting the land title and real estate industries? We summarize issues that could be considered and prognosticate on which ones will receive attention in Washington.

Election-year Politics Dominate Washington

Congress returned in January to a glimmer of hope with Congress and the Administration agreeing to an economic stimulus package. Two provisions to assist the housing industry were included in the final bill. They would authorize a temporary increase in the loan limits for GSE and FHA conforming loans to $729,750 or 120 percent above the median home price in high-cost areas. >>

by Edward C. Miller

We can expect continued partisan bickering on most issues, and great difficulty in moving legislation. The presidential and congressional elections have increased partisan differences in both the House and Senate. Because of its tighter rules, the House continues to consider and pass legislation, while the Senate remains the resting place for many initiatives. With only a slim majority, and the need to gather sixty votes to pass virtually any important legislation, Democrats have had a hard time getting to the finish line.

Congress must pass annual budget and appropriations bills for next year. Fiscal year 2009 begins on October first. Congress did not complete FY 2008 appropriations until just before adjourning for the holidays in late December. Last year Republicans and the Bush Administration were successful in blocking many Democratic spending priorities by remaining united in the Senate and issuing presidential veto threats. We can expect similar tactics this year.

There will be fewer legislative days in the session to accomplish the congressional agenda.

The congressional schedule is limited this year by primary election dates and the national party conventions. So there will be fewer legislative days in the session to accomplish the congressional agenda. Beyond appropriations and a few major bills, little is expected to be completed.

The final year of any administration becomes a time when regulators step up their activity to help build their president's "legacy." Issues that were not addressed legislatively may be handled through regulatory intervention. RESPA reform is one example of that activism.

The Real Estate Industry—What Can We Expect?

RESPA Reform

The Department of Housing and Urban Development (HUD) proposed RESPA reform rule should be open for comments by publication of this article. The following information is based on intelligence gathered before the proposal was publicized. The rule attempts to standardize the Good Faith Estimate (GFE) and enhance loan-term disclosure. It would do so by including better disclosure of adjustable rate mortgage costs, yield spread premium payments, prepayment penalties, and balloon payments. Title costs would be summarized on the GFE in two places—one for lender required lender's title insurance and another for optional owner's title insurance. Certain lender charges (service charge, government recording and transfer charges, interest rate lock charge) could not change at closing. Other required service costs, including the lender's title policy if the

RESPA reform has been a hot topic for the last several years. Gary Cunningham from HUD addressed the attendees of last year's Federal Conference with an update. Look for another senior HUD official at this year's Federal Conference.

title insurer is chosen by the lender, could only vary by 10 percent from the GFE at closing. If the consumer chooses the title insurer, changes in these costs are not limited.

The rule will propose an addendum to the HUD-1 settlement statement called the "closing script," that would be read to the borrower by the settlement agent at closing, and provided to the borrower. This would compare actual charges to estimated charges and describe the loan terms in detail to the borrower. ALTA submitted comments to HUD on the proposal (Available at *www.alta.org*).

HUD will also seek legislative changes related to RESPA reform. It seeks the authority to impose civil monetary penalties for violations of certain RESPA sections, and HUD and state regulatory authority to seek injunctive and equitable relief for RESPA violations. It would also re-

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quire delivery of the HUD-1 to the borrower three days prior to closing and would establish a uniform statute of limitations applicable to governmental and private actions under RESPA. Any ensuing legislation could serve as a vehicle for ALTA to seek a competitor's private right of action for injunctive relief.

Housing Finance Reform

Continuing mortgage problems may force Congress to take some concrete action to address subprime lending issues and foreclosures. Several proposals have been introduced. They include mortgage reform and predatory lending legislation, bankruptcy code changes, FHA program reforms, and a new regulatory scheme for the Government Sponsored Enterprises (GSEs—FannieMae, FreddieMac, and the Federal Home Loan Banks).

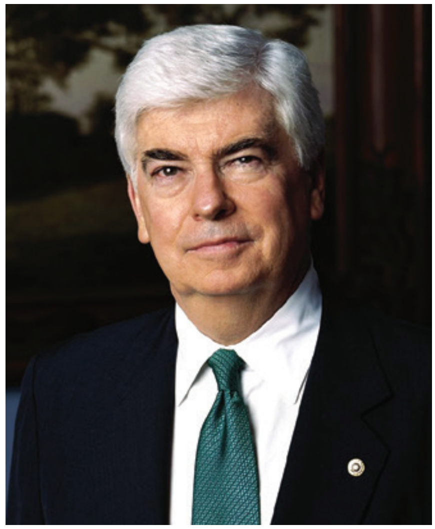
The House passed H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act, on November 15, 2007. This comprehensive legislation will create a licensing system for residential mortgage loan originators, establish a minimum standard requiring that borrowers have a reasonable ability to repay a loan, and will attach a limited liability to secondary market securitizers. The legislation will also expand and enhance consumer protections for "high-cost loans," include protections for renters of foreclosed homes, and establish an Office of Housing Counseling through the Department of Housing and Urban Development.

The bill does not create any new title industry requirements and does not include title charges in the determination of high-cost loans. ALTA will continue to monitor the legislation to ensure it is not amended to add any title licensing or regulatory burdens.

Senate Banking Chairman Chris Dodd (D-CT) floated draft mortgage reform legislation in November that would impose tougher requirements on lenders and increased liability on secondary mortgage portfolio buyers. It would ban yield spread premiums and prepayment penalties and impose suitability standards on mortgage originators when presenting options to prospective borrowers. Chairman Dodd is expected to become more active on these issues, now that he has abandoned his run for the White House.

Controversial bills to amend the bankruptcy code are receiving attention by Congress. The legislation would allow bankruptcy judges to alter loan terms to reduce the primary mortgage balance owed by the borrower with a "cramdown" of the mortgage loan balance. Lenders oppose these bills as judicially imposed contractual amendments that could limit mortgage money made available by securitization of loans. The cramdown was eliminated in bankruptcy reform legislation enacted in 1994.

Both the Senate and House have passed versions of legislation to reform Federal Housing Administration (FHA) programs. H.R. 1852, the Expanding American Homeownership Act of 2007, passed the House on September 19, 2007. The legislation, introduced by Representatives Maxine Waters (D-CA), Chairwoman of the Subcommittee on Housing and Community Opportunity, and Barney Frank (D-MA), Chairman of the Financial Services Committee, will enable FHA to serve more subprime borrowers at affordable rates and terms, recapture borrowers that have turned to predatory loans in recent years, and offer refinancing loan opportunities to borrowers struggling to meet their mortgage payments in the midst of the current turbulent mortgage markets. The House adopted an amendment that directs the FHA to make refinancing loans available to existing qualified homeowners who are in default or at risk of default due to rate resets or mortgage market conditions and to authorize lower down payments for such purposes. The amendment also includes provisions to address problems arising from inflated appraisals.



Senate Banking Chairman Chris Dodd (D-CT)

The Senate passed their version of the legislation (S. 2338) on December 14, 2007. It is expected that the two bodies will reconcile their differences and enact final legislation early in this session.

Measures to create a new regulatory structure for the GSEs have been considered for several years due to accounting irregularities at FannieMae and FreddieMac. The House of Representatives passed H.R. 1427, the Federal Housing Finance Reform Act of 2007, back in May 2007. The bill will overhaul the regulatory oversight of the government sponsored enterprises and create a new, independent regulator with broad powers analogous to current banking regulators. It would also create higher loan limits for conforming loans in high-cost areas. Inclusion of an affordable housing fund in the House bill is opposed by some Republicans as a tax on housing. Both the House-passed bill and last year's Senate versions contain ALTA-supported provisions on program approval and measures to prevent "mission creep" by the GSEs to move into activities beyond the limitations contained in their original charters. Senate Banking Committee Chairman Chris Dodd (D-CT) has stated his intention to complete a GSE reform bill this session. He faces opposition from some committee Republicans who seek stricter portfolio limits on the GSEs.

How Can You Help?

Get involved in the political process. Become informed about your state and federal representatives' positions about your industry. Take the time to meet with them to explain the importance of the process involved in placing title insurance. Let them know how integral the title search and policy are to the free transfer of real property and the creation of capital in the United States. Your elected officials want to know this information, and will be thankful to hear it from you.

Attend ALTA's Federal Conference and your state association meetings. Become active on ALTA policy committees. Your participation strengthens your associations' base of knowledge and increases its effectiveness.

Join the grassroots network at ALTA and your state association. That way, when an issue comes before your state or federal legislators that could negatively affect your livelihood, we can let you know. You can join other title professionals in a campaign to stop these actions and promote policies that support your business.

Contribute to the Title Industry Political Action Committee (TIPAC). Your contributions will be combined with others to get a "bigger bang for your buck" in Washington. It is a necessary part of how the political process works. Your PAC dollars help ALTA open doors to ensure your interests are heard by policy leaders.

ALTA will give you the information you need to stay on top of the issues related to your business. *Title News* and *News You Can Use* are both informative sources to you.

TIPAC

Dodd will need to negotiate with his Committee members and House Financial Services Committee leaders to get a final bill enacted.

S. 2036, entitled Protecting Access to Safe Mortgages Act, was introduced by Senator Charles Schumer (D-NY) on September 10, 2007. This legislation seeks to temporarily expand the role of the GSEs in order to stabilize the subprime mortgage markets. It would allow a mortgage portfolio expansion and an increase in the maximum loan limit and would expire after one year. Recent efforts have focused on temporary two-year increases in the conforming loan limits to help consumers with high interest rate resets obtain conventional fixed rate loans.

Federal Insurance Regulator?

Large insurance underwriters and banks have been attempting to gain passage of legislation to create a new federal insurance charter for many years. In 2007 several hearings were held on insurance regulation and problems associated with state oversight. Representative Paul Kanjorski (D-PA), Chairman of the Capital Markets, Insurance, and Government-Sponsored Enterprises Subcommittee of the House Financial Services Committee will hold additional hearings on insurance issues in 2008. He will focus on various responses to problems raised in previous hearings. They include the slow pace of new product approval, diverse licensing requirements, and the need for national standards to compete in international markets.

One measure that was reintroduced in the 110th Congress by Senator John Sununu (R-NH) is S. 40, The National Insurance Act of 2007. The House companion bill, H.R. 3200 was introduced in July 2007 by Representatives Melissa Bean (D-IL) and Ed Royce (R-CA). It seeks to modernize insurance industry regulation by providing an optional federal charter (OFC) for insurers. It would create a new federal insurance regulator within the Treasury Department that would have powers similar to the Office of the Comptroller of the Currency (OCC). A federally chartered insurer would be governed by this agency and would not be subject to state insurance regulation.

ALTA remains opposed to the creation of a new federal bureaucracy to regulate insurance. Existing state regulation can be improved for efficiency and better coordination.

> Senate Banking Committee Chairman Chris Dodd (D-CT) has stated his intention to complete a GSE reform bill this session.

But a dual regulatory system could be harmful to title professionals and consumers by preempting state insurance and consumer protection regulations. This has already occurred in the banking arena under the OCC, which has ruled that state mortgage licensing regulations are preempted by the federal authority. States are best prepared to oversee the insurance industry and to respond to consumer complaints. ALTA is a member of a coalition consisting of insurance agents and companies, consumer groups, state governors, legislators, regulators, and attorneys general who are opposed to a federal insurance charter.

This year's version of the bills includes a definition of title insurance and a monoline provision that would prohibit Property/Casualty insurers from directly offering title insurance policies disguised as mortgage impairment products. The bills also include surplus lines of insurance as a type of insurance that a company with a federal producer's license would be authorized to sell under the federal charter program. Action beyond additional hearings is not expected in 2008.

Will Congress Create A Federal Tax Lien Database?

Introduced by Senator Carl Levin (D-MI), this bill would create a national tax lien database to replace filing federal tax liens in local property offices. It would establish the priority of the tax lien according to the date it was filed in the national database. This legislation could create severe difficulties for the title agent during the search. A nationwide system containing thousands of the same or similar names with properties located throughout the country would need to be searched and sorted. It could increase liability under a title policy because it would expand the definition of a "public record." There has been no action on this legislation, and it is not expected to move during this session of Congress.

Other Financial Services Issues

Congress will continue to consider other issues including federal flood insurance reauthorization, natural catastrophe and terrorism insurance, data security, regulatory relief and consumer credit issues, and credit card practices.

Because of its abbreviated schedule this session, Congress will not consider many of these proposals. But the groundwork laid during 2008 will serve as a foundation for further efforts of the new Congress in 2009, particularly if the Democrats make large gains in the Senate.

ALTA will continue to engage congressional and administration leaders and staff to ensure the title industry's interests are communicated and addressed in legislative and regulatory proposals during 2008. This groundwork will place ALTA in a good position to address any challenges that arise in 2008 and beyond.

Edward C. Miller is chief counsel and vice president of public policy for ALTA. He can be reached at *ed@alta.org.*

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BY SHANE KANE

Positioning Your Title Company for Success

The long-term viability of your title business lies in your ability to communicate the value you deliver to your clients. Learn the pitfalls to avoid when marketing your services to prospects.

It is not enough in today's market to simply be visible. To truly distinguish your title company, you must highlight a solution or point of difference that is meaningful to your prospects.

In marketing, differentiating yourself from the competition is called positioning. Positioning refers to how you—and your target market—define your business in relation to your competitors. It involves creating a core marketing message that clearly states:

- Who you work with
- What problems you solve
- What solutions you provide
- What benefits you offer
- What results you produce
- What guarantees you offer

The truth is that most title companies look and sound the same. Why? Because few bother to actively create or communicate any form of positioning. When a title company fails to differentiate itself, it gets lumped in with every other firm and branded with the least desirable label of all: commodity. If you don't find a way to distinguish yourself, you will inevitably struggle to attract clients, and will be destined to compete solely on fees.

Getting "lost in the crowd" can be the single greatest detriment to your title business. To steer clear of this fate, it is crucial to know what pitfalls to avoid when marketing your services.

The "Me Too" Marketing Trap

Title companies often get caught up in "me too" marketing. For example, instead of staking out a specialty, they try to match or trump the laundry list of services their competitors offer.

Another way to sabotage your marketing efforts is trying to appear much larger than you are. If your firm is small, embrace your size and target other small companies. The very qualities you are tempted to hide can be your greatest assets. It is much easier to sell to companies that share the same characteristics as you. After all, you have a natural affinity.

Here is another example of ill-advised "me too" marketing. As soon as they can, some small title businesses try to follow in the footsteps of large title agencies by creating an impersonal "corporate image." That's a mistake. Big companies are often perceived as cold and uncaring, with poor service and inattentive staff. Is that how you want your firm to be perceived? People prefer to do business with people, not institutions.

Duplicating the image or service offerings of your competition does not guarantee your success. In fact, it only ensures that you become a second-rate clone of another title firm. In order to achieve your goals, it is important to get back to basics. Discover your unique strengths and focus on the things that make your title company noteworthy.

Finding Your Unique Selling Position

Today, mortgage and real estate professionals are holding on to every deal tighter than ever. Competition is fierce, and every commission dollar is important. That is your prospects' reality — and that is what your marketing must address. The bottom-line is that clients want someone to answer their questions and provide prompt and diligent service.

All too often title companies focus their marketing materials on themselves—instead of how they can benefit their target prospects. Frankly, prospective clients are not very concerned with your credentials. They only want to know how you can help them.

Learn from the mistakes of other firms. Instead of blindly following the herd, present a fresh message to prospects by showcasing your company's unique selling position. Focus on what is remarkable about your agency and align it with the primary benefit that you deliver to your target clients. Singling out and emphasizing even one powerful advantage can have a huge impact on how your business is perceived.

How do you find your unique selling position? Start by taking a long, close look at your business as a whole. What are those areas in which you excel? What makes your firm inherently different? Maybe it's your exceedingly friendly staff, or lightning-fast service. Focus on what's unique about you and important to a potential client. Once you've determined your unique selling position, you'll know how to present your services to the marketplace.

Presenting Your Services

One investment every title company should make is an attractive and appropriate business package. The look and feel of its materials must mirror the image and professionalism of your business.

Your marketing materials should accomplish the following goals:

- Clearly communicate the value of your services
- Demonstrate that you not only understand the prospect's specific issues, but also will solve them
- Emphasize benefits and results more than credentials and processes
- Establish a sense of trust and confidence.

Remember, it is a leap of faith for prospects to engage a new professional service firm. They may wonder whether you are as reputable and reliable as you claim you are. They may worry about whether you have the experience and resources to handle their important transactions. And, they may fear making a mistake in hiring you.

In the title business, like any service business, we are selling the intangible. Your marketing materials must instill confidence in the potential client that you can deliver. To do this, you must paint a clear, credible and compelling picture of the value you provide.

Another effective way to reinforce your unique selling position is through client testimonials.

The Power of Testimonials

Testimonials are powerful and persuasive sales tools. They create credibility, break down natural fear barriers, and provide a sense of security for your potential client. So how do you obtain riveting quotes that engage your prospect's attention and instill a sense of trust?

Contact your existing clients and explain that you are updating your marketing materials and would be grateful if they would provide a testimonial. To save them time and hassle, offer to write a first draft for them, and then let them make any changes they want.

I have found this to be the most effective means of obtaining quality testimonials. When you let the clients write the testimonial themselves, most tend to say the same thing. Their comments usually lack the specificity you want, and rarely express the qualities that make your business unique.

The testimonials should also include some background information about your company and your relevant industry experience. But most importantly, be sure the quotes reinforce your unique selling position.

Standing out in today's competitive marketplace requires more than sharp skills and impressive credentials. Your ultimate success will be determined by your ability to identify what makes your firm exceptional, and use that information to craft a powerful selling message to your prospects.

Title professionals who incorporate these principles into their marketing efforts stand to gain a true competitive edge.

Marketing Materials Checklist

Does your marketing collateral include:

- An overview of the problems your prospects face?
- An overview of how you solve those problems?
- A summary of the benefits your services/solutions provide?
- A list of your services and the geographic areas you serve?
- A list of existing clients?
- Testimonials from satisfied clients?
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Shane Kane is founder of TitleSuccess.com and author of the title marketing guide "*Successful Marketing Strategies for Today's Title Professionals*." He can be reached at *skane@titlesuccess.com*.

Recognizing Mortgage Fraud

Real estate and mortgage fraud stories are all over the news. Do you know the two kinds of prevalent fraud? Learn some of the red flags to prevent a disaster from happening.

Unfortunately for our industry, the hottest topic being discussed at our meetings and conventions lately is real estate and mortgage fraud. It seems you can't open a newspaper or Internet article without seeing this topic in bold print. Why is there all of this attention to fraud?

Mortgage fraud is being declared by many as real estate's white-collar epidemic. This type of fraud is quite complex and difficult to spot, which then makes it even more difficult to police. One of the reasons it is hard to detect is because in order for fraud to occur, at least two of the parties to the transaction need to be in collusion. Title companies, real estate licensees, and mortgage lenders need better education on the frequently occurring types of fraud to detect the red flags that reveal themselves in these types of transactions.

Mortgage fraud isn't a victimless crime. The mortgage lenders with the deepest pockets are ultimately the hardest hit financially, but the effects of mortgage fraud are felt by many. Artificially inflated homes that are either difficult or impossible to refinance or sell lead to an increase in foreclosures. That in turn leads to deteriorating neighborhoods and an increased hardship for the people living in those communities.

According to the FBI Web site, the top ten states experiencing mortgage fraud in 2006 were California, Florida, Georgia, Illinois, Indiana, Michigan, New York, Ohio, Texas and Utah.

Two Types of Fraud

There are two main types of mortgage fraud: Fraud for Property and Fraud for Profit. Fraud for property makes up approximately 20 percent of all fraud cases. While fraud for property is still considered true fraud, it is not as damaging to lenders as fraud for profit.

Fraud for Property

Let's take a look at some of the different types of fraud for property schemes:

- **Occupancy Fraud**
  The buyer/borrower or mortgage broker leads the lender (investor) to believe that the buyer will occupy the property when in fact, he/she will not. This results in the buyer securing a lower interest rate on the mortgage.
- **Silent Second Mortgage**
  In this scenario, the buyer borrows the down payment from the seller, but this mortgage is not disclosed to the lender. After closing, the buyer will make two payments, one to the lender and one to the seller. The second mortgage is usually recorded after the first mortgage to make sure the lender never discovers it. The lender lends the money believing that the borrower used his own money for the down payment. The scenario is most often used when the borrower is a higher default risk and might not qualify for both payments.
- **Disappearing Second Mortgage**
  The buyer supposedly borrows the down payment from the seller (usually in the form of equity) by means of a second mortgage. What the lender doesn't know is that the mortgage is not real and usually "disappears" after closing (hence the name). An inflated appraisal is often used to increase the value and sales price of the property and that inflated value is used to determine

the mortgage. The scheme is usually used for borrowers who require 100 percent financing but can't qualify for it otherwise.

Fraud for Profit

The remaining 80 percent of fraud cases are fraud for profit. These types of transactions can be catastrophic to lenders, homebuyers, and the communities where these properties are located. They lead to a high default rate, leaving lenders with huge financial losses, homebuyers with homes they can neither refinance nor sell, and communities with subdivisions that have an abundance of vacancies.

These are a few examples of fraud for profit.

- **Property "Flip"**
  This one you may be familiar with. Here's how it works: A buyer pays a low price for property, then resells it quickly (most of the time the very same day) for a much higher price. While it is always legal to make a profit on property, it is not legal if an appraisal has been inflated to distort the value or if it is sold to an unsuspecting buyer and involves false information or statements given to the lender. In many cases, funds derived from the second closing are used for the purchase in the first closing. The "flipper" seldom takes title or receives a 1099 for any profit made.
- **Two Sets of Settlement Statements**
  One settlement statement is given to the seller showing the sales price he/she agreed upon, which the seller signs. A second settlement statement is prepared and sent to the lender showing a much higher (inflated) sales price so the buyer can obtain a much higher mortgage, usually in excess of the sales price. Once the property closes, the excess funds are divided between the conspirator and the parties to the transaction.
- **Fraudulent Qualifications**
  Real estate agents and mortgage brokers misrepresent the buyer/borrower's ability to qualify for a loan by fabricating employment history, income verification, credit records and bank statement balances. Sometimes these schemes solicit the use of asset rentals, which are companies set up strictly for the purpose of committing fraud. For a fee, they transfer money into the borrower's bank account to show the lender that the borrower has ample funds to close and even enough for reserve. Once the closing takes place however, the funds are transferred back to the asset rental company. These types of companies can also issue fake appraisals, credit reports, employment verifications and even give the borrower a new Social Security number usually taken from someone who had died in the early part of the century!

Most mortgage fraud schemes could not be achieved without the help of industry insiders.

How Does This Affect Me?

These are just a few examples of schemes being perpetuated at the time of this writing. So the question is as a title professional, how does real estate and mortgage fraud affect you? What if you don't know anything fishy is going on? Can you be held responsible? The answer is yes, you can!

As stated earlier, most mortgage fraud schemes could not be achieved without the help of industry insiders. The FBI considers industry insiders to include real estate professionals, appraisers, title companies, settlement agents, and mortgage professionals. These are the parties that have a hand in getting transactions closed successfully. Even if you are unaware that fraud is occurring in the mortgage part of your transaction, a judge could say that because you are a licensed title professional, you have more knowledge than the consumer. You should have known better or, at the very least, have seen some warning signs.

One of the best and most prevalent examples of fraud is when the purchase agreement is presented to the seller, accepted, and then the price is later changed to fit the mortgage requirements. Here's how it works.

Let's say you have a buyer and seller who agree on a sales price of $192,000. The offer is written and accepted at $192,000, and title work is ordered for the same amount. Now let's say the loan officer for the buyer calls to inform you that the sales price needs to be raised to $200,000 with the buyer receiving the additional $8,000 as seller concessions. The sales price is now inflated to $200,000, but where has the value increased? Why was the home worth $192,000 earlier and now suddenly it is worth $200,000?

According to federal law, the HUD-1 settlement statement must contain accurate figures of all the debits and credits in a transaction. What is the sales price reflected? What is the commission based on? Which figure is property transfer tax based on? Do you see where we are going here? What is the actual sales price?

This scenario is still happening all too often, even today. It was (and is) a creative way to allow the purchaser to get the closing costs paid in the mortgage amount, but the sales price can only be one amount. The sales price should be the amount reflected on the HUD-1, and it should be the same amount that the property transfer tax and the commission are based on.

Recognizing Red Flags

How can you protect yourself from becoming involved in a transaction that may be fraudulent? How can you possibly know what is happening behind the scenes regarding the mortgage? Below is a list of red flags that you need to be aware of.

- Your customer can't find their drivers license or some other form of identification.
- The earnest money check is made payable by someone other than the buyer.
- You receive a copy of the appraisal report, and the estimate of value is substantially higher than the sales price or seems in excess of value for the neighborhood.
- The amount of the Loan Policy commitment is higher than the purchase price.
- You perform a market analysis for a potential listing and discover that the property was involved in several recent sales and with large and unexplained increases in each of the sales prices. (FLIP)
- The property has been for sale for several months without an offer being made. Suddenly, a buyer wants to make an offer at or above the listed price with no contingencies except financing.
- A lending closing official asks your client to sign blank documents.

Trust your gut. You can't always believe your eyes and ears, but your gut will never let you down.

- A seller and buyer agree on a sales price, but the buyer's lender later asks that the purchase agreement be rewritten at a higher price to show the seller benefiting from a price differential (as stated in the earlier example).
- A buyer offers more than the seller's asking price subject to the seller carrying back a second mortgage for the differential. A separate addendum not referenced in the purchase agreement states the seller will discharge the second mortgage upon closing.
- A buyer offers substantially more than the seller's asking price contingent upon the seller writing a check at closing that's made payable to a third party for renovations or decorating costs.

Any one of these scenarios could happen in a transaction. It is possible that a buyer could come in with a ridiculously high offer, even higher than the asking price. It's possible, but it is not probable. If any of these red flags are witnessed in your transactions, hold the boat! Get to the bottom of what is occurring. Does the lender have all of the facts? If not, why not?

In some cases title agents are afraid to call foul when they feel something is going awry. This is especially true if they are dealing with a friend or a prominent client who does a fair amount of business with their company. What if you blow the whistle on a transaction because it seems strange to you? If the closing is cancelled and everyone finds out that the deal was legitimate, you might have a very unhappy client on your hands, and you may lose business.

That is why in some states disclosures are being created that include verbiage regarding fraud. It becomes a notice to the parties that the agent may report any suspicious activity they learn of during the mortgage process. On the flip side, these disclosures indicate that the agent is not a trained expert in real estate or mortgage fraud and may not be able to detect that fraud is, in fact, happening. These disclosures aren't such a bad idea since they may keep you out of trouble.

One last piece of advice to remember from a friend who was a lifetime FBI guy: "Trust your gut!" You can't always believe your eyes and ears, but your gut will never let you down. Remember that the bad guys have something over on you; they operate with little or no conscience.

Part Two on Fraud

In the next issue of *Title News*, I will focus on more recent fraud schemes being used around the country such as:

- Seller Bail-out
- Chunking
- Identity Theft
- Property Theft
- Equity Skimming
- Foreclosure Rescue

I will also review what the FBI and local law enforcement agencies are doing to combat this serious trend!

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