July/August 2008

TitleNews

Official Publication of the
American Land Title Association

The U.S. Housing Market's "Perfect Storm"

Leading housing economists talk about the state of the market and when we might see recovery

MORTGAGE

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RESPA Update

Navigating the Untapped World of Reverse Mortgages

The Race to eRecord

ALTA 2008 Annual Convention

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July 19-22	Michigan
August 3-5	Idaho, Oregon, Washington
August 7-9	Montana
August 8-10	Kansas
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August 21-23	Minnesota
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September 10-13	Colorado
September 11-13	Dixie Land *(AL, GA, MS)*
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September 17-19	Arizona
September 18-20	Indiana
September 18-20	North Dakota
September 24-26	Nebraska
November 5-7	Florida
December 5-7	Louisiana

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point of view

Accepting the Challenge

The cyclical nature of our industry is an immutable reality, yet somehow a downturn always feels like an unexpected broadside. Even those among us who saw the signs of an impending contraction could never have predicted the severity of what we're experiencing.

Economists interviewed in this issue of Title News arrange the variables of this market into a somber mosaic and an even more sobering forecast for title underwriters. For the first time in five years, the growth of home prices is slower than income growth, with home price growth in 2007 declining at about 5 percent year-over-year. Credit is constricted. Even with an oversupply of homes on the market and low interest rates available from lenders, buyers and lenders alike are skittish and loan originations are expected to continue to drop well into 2010. Commercial construction is slowing, the dollar is slumping, unemployment is creeping up as are food and gas prices, and it's generally accepted that a recession is gathering momentum.

For many years, we surfed the peaks. Our role now is to accept the challenge of managing competently – and humanely – through the troughs. Fortunately, there is no better crash course than a crisis. Whereas more generous operating margins may have allowed us to tolerate certain inefficiencies or postpone difficult reductions, divestitures, or initiatives, that latitude is gone. Or as Warren Buffet puts it, "You only learn who's been swimming naked when the tide goes out."

To weather this receding tide, inefficiencies in processes and information flow within an office, between locations, and among services must be diagnosed and eliminated. Short-term and long-term strategies now represent the critical path to an organization's very survival. Intelligent planning and relentless execution are what give us the confidence to navigate through this unprecedented decline – where each transaction becomes a referendum on quality of service, clarity of pricing, and the value proposition of title insurance.

As leaders, our obligation to employees and owners is to demonstrate the wisdom and courage we're paid to possess. An important reflection of our privilege to lead is how we treat employees in times of crisis, especially those being laid-off. We've all had the difficult and heart-wrenching task of reducing our forces by 20 percent, 30 percent, and more, while maintaining the resources necessary to respond quickly and efficiently to customer needs. Accomplishing this with respect and empathy, while acknowledging the commitment of those who remain onboard, is the true measure of an organization. Founding Father Thomas Paine wrote, "These are the times that try men's souls." Yet, trying times also reveal greatness. While it's easy to find success when things are flush, true ability and strength of character are revealed when the worst of times inspires us to be our best.

When we hold firmly to our core principles and use them as the alignment device to make the difficult decisions before us, we turn this crisis over and reveal it for the opportunity it really is.

– Theodore L. Chandler, Jr.

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news

ALTA Releases 2007 Title Industry Financial Data

The year 2007 proved to be a tough year for the title industry, according to industry data released by ALTA on June 4. The downturn in the real estate and housing development market has hurt everyone in the industry and proved to be an equal opportunity drag on virtually every sector of the economy.

As a result of the slowing of real estate sales and refinances, title insurance transactions and revenues were down significantly while loss and loss adjustments were much higher. Operating Expenses other than Agents' Retention were essentially flat (down less than 1%), thus leaving the Net Operating Gain down $800 million for a loss of $84 million. Net Investment Gain of $533 million was also down (11.7%), resulting in Net Income of $319 million, down 68.4%.

The end of 2007 marked the seventh consecutive quarter of declining title premiums. Furthermore, while the last two quarters of 2006 and the first two quarters of 2007 were each down around 9%, the third quarter's decline was more than 15%, and the fourth quarter declined 22%, indicating that poor markets continued through the end of the year.

While it was a challenging year, unlike other parts of the real estate industry, the title industry remains financially stable and strong, with year-end Admitted Assets in excess of $10 billion, of which $8.8 billion is in Cash and Invested Assets. At the same time, Statutory Reserves were up over $400 million to almost $5.5 billion, and Statutory Surplus closed the year at $2.7 billion.

On a state-by-state basis, 33 states show written premiums dropping in the fourth quarter by 10% or more, with five or more states declining more than 30%, and 16 between 20% to 30%. On the plus side, six states plus the District of Columbia were up, with Delaware up 66% and Wyoming up 14%. The three largest states in terms of written premiums, California, Texas, and Florida, were down 36%, 8%, and 40%, respectively.

For the year, written premiums declined in 42 states plus the District of Columbia, while only eight states recorded increases. Eight states dropped more than 20% and eleven states dropped between 15% and 20%. Of the states recording increases, only one (Delaware at 12%) increased more than 10%. The two largest states, California and Florida, were down 23% and 30%, respectively.

It's clear from this data that title companies have been sailing into the same strong headwinds many others businesses have faced over the last two years. And while businesses across the board have seen steep declines in revenue, title companies remain financially strong.

For a complete look at the data, please see the tables accompanying this summary on ALTA's Web site at *www.alta.org*.

NAR and CRL Join ALTA in Asking HUD to reform the GFE

In a joint letter dated June 12 , 2008 to HUD Secretary Steve Preston, The National Association of REALTORS® (NAR) and the Center for Responsible Lending (CRL) joined ALTA in recommending reform of the Good Faith Estimate. The letter stated that a summarized GFE should be accompanied by a more detailed GFE, with explanations of each subcategory of fees, in order to help consumers understand more fully the services and accompanying fees for which they are being charged.

> news

ALTA Files Lawsuit in California Against Property and Casualty Insurers for Illegally Issuing Title Insurance

ALTA has filed a complaint in California Superior Court against 13 property and casualty companies and six producers to stop the illegal practice of selling mortgage impairment/lien priority insurance, which is title insurance.

The basis for the complaint is that the defendants are not licensed to sell title insurance. Therefore, they are not subject to appropriate regulatory oversight and have not been required to establish sufficient capital and reserves. This gives the defendants an unfair competitive advantage and creates an uneven playing field for properly licensed title insurers.

The complaint states that "ALTA's members, the licensed title insurers, have standing to sue in their right because, as set forth herein, they have lost business in the California market due to the defendants' unlicensed title insurance business, the cost of their doing business is increased as a result of defendants' conduct, and defendants' conduct threatens to undermine the title insurance industry."

In a public statement, ALTA CEO Kurt Pfotenhauer stated: "Mortgage impairment/lien priority insurance offered by property and casualty companies violates state laws, puts lenders and consumers at risk, and because no title search or corrective is performed, it threatens the integrity of public land records—the bedrock upon which real estate ownership in this country is built."

An initial lawsuit was filed in Oct. 2005 in federal district court in California, which was dismissed in May 2006 when the judge ruled that individual states must decide who can be licensed to sell title insurance. ALTA refiled in California Superior Court on April 9, 2008, which is set for a case management conference on September 12.

ALTA has asked for a preliminary injunction enjoining the companies from issuing the policies in California and other states pending the outcome of the case.

ALTA President Gary Kermott Testifies Before House Small Business Committee

ALTA President Gary Kermott testified on May 22nd before the House Small Business Committee, where he urged Congress to examine the potential pitfalls in HUD's proposed changes to RESPA.

Among concerns expressed by Kermott were changes that, while intended to help consumers better understand the closing process, would result in more confusion, red tape, and cost for people both buying and selling a home.

While Kermott stated that ALTA supports HUD's goal of helping consumers to better understand the real estate transaction by receiving easy-to-understand and reliable information to facilitate comparison and choice, the current proposal only serves to undermine that goal.

"We believe that RESPA reform cannot be resolved in one sweeping change without considering and appreciating the many moving parts of a residential real estate transaction," Kermott said in his testimony.

ALTA Hires Director of Government Affairs

ALTA is pleased to announce the hiring of Justin Ailes as Director of Government Affairs. Ailes comes to ALTA from Indiana's office of federal affairs in Washington, DC, where he represented Governor Mitch Daniels before Congress, the National Governors Association, and the Midwest Governors Association. He also served on U.S. Senator Lugar's staff for five years, and worked in the Indiana State Senate. Ailes will focus his attention and resources on growing ALTA's relationships with state associations and officers. Justin can be reached at justin_ailes@alta.org

RESPA REFORM:
ALTA FILES COMMENTS WITH HUD

ALTA filed its official comments with HUD on the proposed RESPA rule on May 13. In a letter to the Department, ALTA CEO Kurt Pfotenhauer lists four major areas of concern:

1. **Closing Script**
   - The "closing script" will significantly increase the amount of time required for closing. In its estimate, HUD took into consideration only the amount of time necessary to read the script to the borrower. It did not include the significant amount of time that will be necessary to address questions or resolve discrepancies in connection with loan terms and final settlement costs.
   - In the absence of a binding obligation on lenders to provide the closing script information to the closing agent well in advance of closing, the closing agent will be unable to prepare the closing script if there is any delay by the lender.
   - The mortgage lender is in the best position to prepare the closing script or an alternative document, which should be presented at some point prior to closing to ensure a meeting of the minds between the lender and the borrower. Requiring the closing agent to develop this mutual understanding at settlement imposes the obligation on the wrong party at the wrong time in the transaction.
2. **Title Insurance Fee Disclosures**
   - With regard to the GFE and HUD-1, ALTA asks the department to reconsider the disclosure of certain title insurance services and fees on both of these disclosures. HUD should continue to require the itemization of all title-related charges on both the GFE and HUD-1 so that consumers can match specific services to their individual needs and more easily shop for the title insurance services they desire.
3. **Recording Fees and Average Cost Pricing**
   - ALTA questions the department's authority to impose tolerance limitations on estimates provided by lenders and asks HUD to remove government recording fees from the proposed zero-tolerance category. Such fees are rarely known to mortgage lenders or title insurance companies at the GFE stage, and there are a number of reasons why these fees may change before or after closing.
   - Alternatively, if all settlement service providers were authorized to charge consumers the average cost price, the Association believes the certainty of the average cost price would benefit both consumers and our members, particularly as it relates to recording fees.
4. **Volume Discounts**
   - It is ALTA's position that volume discounts are anticompetitive and will disproportionately harm small businesses. Small independent title agencies do not have the resources to guarantee a stream of business or discount their prices to compete with large national title providers. If small businesses are pushed out of the competitive marketplace, large providers will compete only among themselves, leading to less consumer choice.

For a full transcript of ALTA's comments, visit the RESPA Reform Resource center at *www.alta.org*.

Small Business Administration Weighs in on RESPA

ALTA representatives participated in a roundtable discussion in May with the U.S. Small Business Administration (SBA) to express concerns with the RESPA proposal's impact on its smaller agents. The SBA sent a letter on June 11 asking HUD to reconsider volume discounts. The SBA also recommended eliminating the closing script and creating GFE that mirrors the HUD-1.

The U.S. Housing Market's "Perfect Storm"

Title News interviewed five leading housing economists who describe the simultaneous occurrence of events that led to the historic collapse of the housing market and predict when the market will begin to stabilize.

The old saying goes that if you ask two economists for their opinion, you will get at least five answers, and probably more. However, in interviews with leading housing economists by *Title News*, there was a consensus of opinion about the current state of the residential housing market: this slump is one of the worst in history and recovery is, at best, a year away. As Dr. Lawrence Yun, chief economist for the National Association of Realtors puts it, "We were in a period of excessive optimism during the boom years, and now the pendulum has swung to a period of excessive pessimism." >>

by Noel Card

MORTGAGE

The Housing Boom: Causes and Effects

Most agree that the housing market began to take off in earnest in 2001, while the country was experiencing a mild recession, starting a period of unparalleled growth in sales and home value appreciation. According to Doug Duncan, chief economist for Fannie Mae, the housing expansion was of historic proportions, "contributing positive additions to the Gross Domestic Product (GDP) for seven consecutive years, the longest streak in history."

The underlying reasons for the boom are many, including demographics, the dot.com stock bubble bursting and economic uncertainty, historically low interest rates, an expansion of mortgage products and, perhaps most importantly, a fundamental shift in the way consumers viewed investing in real estate. The combination of these factors created the greatest housing boom in U.S. history.

Falling Stocks and the Rise of Real Estate

In 2000 the members of the baby boom generation were 36- to 54-years old, which are peak homebuying ages. The result was a natural ramping up of demand for both first-home purchases as well as for newer, larger homes.

Panel of Economists

Douglas Duncan, Ph.D.
Chief Economist and Senior Vice President
Fannie Mae

Alex Pollock
Resident Fellow
American Enterprise Institute
former president and chief executive officer of the Federal Home Loan Bank of Chicago

Nicolas Retsinas, Ph.D.
Director of the Joint Center for Housing Studies
Kennedy School of Government, Harvard University
Assistant Secretary for Housing & Federal Housing Commissioner at U.S. Department of Housing and Urban Development from 1993-1998

John Weicher
Director of the Center for Housing and Financial Markets
The Hudson Institute
Assistant Secretary for Housing and Federal Housing Commissioner at U.S. Department of Housing and Urban Development from 2001-2005

Lawrence Yun, Ph.D.
Chief Economist
National Association of Realtors

But real estate was a popular investment for another reason: other investments, particularly securities, were becoming increasingly unpopular. The surge of investment in dot.com companies and new ventures in the Internet sector and related fields began in 1995 and came to an abrupt halt in March 2000. All that time, the NASDAQ reached its historic peak of 5132.52, just before it crashed and burned.

Billions of dollars in venture capital had flowed into start-up Internet-based companies that generated neither revenues nor profits, but was spent lavishly on technology, facilities, and perks for employees. When the bubble burst, a victim of poor business models and a slowing economy, the enthusiasm for the "new economy" that was the promise of the Internet revolution disappeared.

A year and a half later, America suffered the terrorist attacks of September 11th, causing the greatest one-day and one-week drops in the history of the Dow Jones Industrial Average. In December 2001, the Enron accounting scandal broke, which led to the demise of Arthur Anderson LLP, one of the big five of the accounting industry. A similar scandal at telecommunications giant WorldCom, resulted in the largest bankruptcy filing in U.S. history. While the stock market rebounded in early 2002, it crashed again in the final two quarters of that year, generating increased uncertainty about investing in securities.

During the same period, the Federal Reserve cut short-term interest rates to historically low levels, from 6.5 percent to one percent, as a response to the ongoing recession. The cut had a profound impact on the

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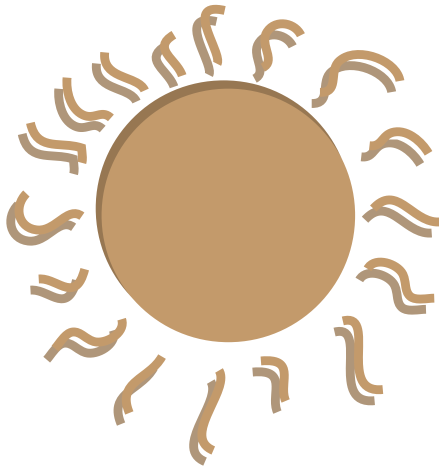
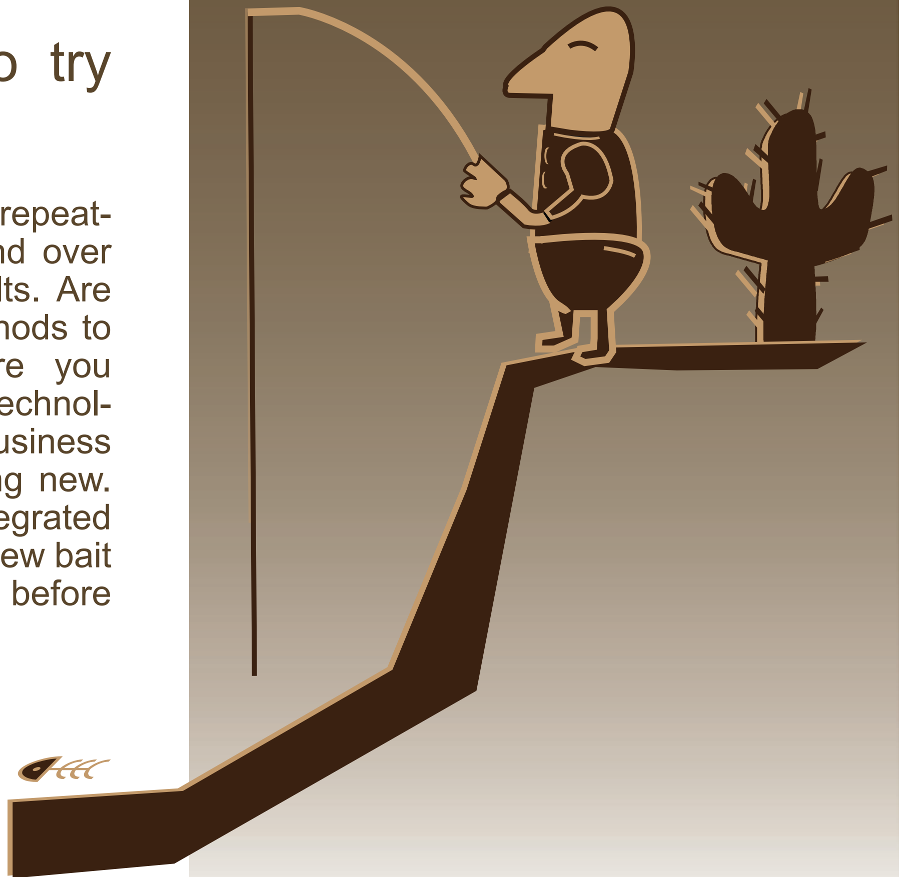
or are you *catching*?





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availability of credit, with the interest rate on conventional 30-year mortgages dropping from 8 percent to a historic low of 5.5 percent.

With low-cost financing available and demand for housing rising, those seeking relative calm and security for their investments found real estate a welcome refuge, and the housing boom was on.

The Housing Market Takes Off

According to the Joint Center for Housing Studies, the production of new single-family homes grew quickly in the early part of the decade, steadily rising from 1.2 million units in 2000 to a peak of 1.7 million units in 2005. New home sales grew steadily from 807,000 in 2000 to 1.28 million in 2005, and the sale of existing homes rose from 5.1 million to 7.1 million over the same period. The sales price of a new single-family home jumped from an average of $209,188 to $244,702 in 2005, an increase of 16 percent. The sales price of existing homes climbed 26 percent, from $154,563 to $209,547.

These surges in home value capped a long run of increases. During the ten year period between 1997 and 2006, house prices in the U.S. rose by an amazing 124 percent, according to Standard & Poor's/Case-Shiller national home price index.

However, real estate, like the weather, is a local phenomenon. While parts of the country did not experience significant increases, other parts of the country were virtual boomtowns. Former Federal Reserve Board Chairman Alan Greenspan described the price increases as "a froth of small bubbles" across the country that added up to an aggregate housing bubble.

Between 2001 and 2006, house values skyrocketed by 80 percent in metro Las Vegas, Los Angeles, Miami, Phoenix, Tampa and Washington, D.C., but by less than 10 percent in metro Atlanta, Charlotte, Cleveland, Dallas, Denver and Detroit, according to the Case-Shiller index.

According to Alex Pollock, a resident fellow at the American Enterprise Institute, "This time we had the greatest house price inflation in U.S. history. The value of U.S. residential real estate almost doubled between 1999 and 2006. The U.S. residential mortgage market was

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already the biggest credit market in the world, and it grew to have total loans of over $10 trillion."

A Wave of Speculation

A subtle but important shift in consumer attitudes towards homebuying began to take hold by 2001, according to Dr. Nicolas Retsinas, Director of the Joint Center for Housing Studies at the Kennedy School of Government at Harvard University. "Historically, the value of housing did not reflect its prospects for monetary appreciation," says Retsinas. "From the Mayflower colonists to the succeeding surges of immigrants, a house was a sanctuary… a house's 'value' lay in its capacity to nurture a family. Admittedly, a home was an asset, but an illiquid one that few owners expected to appreciate beyond inflation. Many families, coping with repairs and taxes, saw their homes as money pits, not wealth-creating investments."

When double-digit annual increases in the value of houses began to occur, consumers' attitudes towards buying a house began to shift from consumption to investment, with the future value of the home driving decision-making. The rewards of residential real estate became so lucrative that consumers "would be embarrassed if they didn't buy, because the price of the house will go up tomorrow," says Retsinas.

Pollock describes it this way: "There is no more destabilizing experience a person can have than seeing someone else make money – especially if it's your brother-in-law."

Speculation became a major force in the housing market, driving up prices and production. It led to a new type of investor, called a "flipper," who bought houses and then quickly resold the property, reaping considerable profits in a short period of time. The trend even inspired a spate of cable television shows, such as "Flip that House" on the A&E network and "The Real Deal" on The Learning Channel.

Subprime Loans and the Bursting of the Housing Bubble

One of the driving factors in the meteoric rise in the sale and production of homes was the availability of historically inexpensive mortgages. As the housing market expanded and home values rose, lenders started to push less utilized, riskier mortgage products, such as subprime mortgages. A subprime mortgage is defined as a loan that does not meet the lending guidelines of Fannie Mae or Freddie Mac. Subprime mortgages were provided to borrowers who were not "prime," which means they could not qualify for conventional loans because of various risk factors, such as small down payments, poor credit histories, or high debt-to-income ratios.

Subprime mortgage loans generally have higher interest rates than conventional loans, and in some cases have adjustable rates, just like an adjustable rate mortgage (ARM). ARMs charge a low, below-market "teaser" interest rate early in the payment period. The

Changes in House Values

March 2007 to March 2008
Standard & Poor's/Case-Shiller Home Price Index

Metropolitan Area	One-Year Change (%)
Atlanta	- 6.5%
Boston	- 5.9%
Charlotte	0.8%
Chicago	- 10.0%
Cleveland	- 9.5%
Dallas	- 3.3%
Denver	- 5.0%
Detroit	- 17.9%
Las Vegas	- 25.9%
Los Angeles	- 21.7%
Miami	- 24.6%
Minneapolis	- 14.1%
New York	- 7.4%
Phoenix	- 23.0%
Portland	- 4.0%
San Diego	- 20.5%
San Francisco	- 20.2%
Seattle	- 4.4%
Tampa	- 19.6%
Washington, D.C.	- 14.7%
U.S. National Index	**- 14.1%**

Source:
Standard & Poor's and Fiserv
Data through March 2008

loan's interest rate is reset to a higher rate a few years later.

The idea was that subprime loans and ARMs would give millions of people the opportunity to achieve the American dream of homeownership, which was being strongly encouraged by political leadership at the time and touted in the media. Homeownership rose to historic levels, peaking at 69.2 percent in 2004.

The increased risk of subprime loans was perceived as being acceptable to lenders and borrowers because of the rapidly appreciating market. "As long as house prices were escalating, all parties thrived; homeowners got their dream, brokers got their commissions, lenders got their return, and investors got rich," says Retsinas. "And in a rising market there always was an exit strategy available. If a homeowner could not make the monthly payments, particularly after the grace period of the low opening rate, he could sell the house, and maybe make a profit in doing so."

It is not surprising that subprime loans mushroomed during the boom, reaching a volume of $1.3 trillion dollars, and 7.5 million first-lien subprime loans, as of March 2007. About 21 percent of all mortgage originations from 2004 through 2006 were subprime, up from 9 percent from 1996 through 2004, says John Lonski of Moody's Investors Service.

The source of capital for the loans came from all over the globe through the practice of securitization, which is the use of complex investment vehicles that package the rights to mortgage payments into mortgage-backed securities (MBS) or collateralized debt obligations (CDO). Because the housing market was so robust at the time, the major ratings agencies gave these securities their highest ratings. The MBS and CDO markets were huge. The Industrial and Commercial Bank of China purchased $1.23 billion in mortgage-backed securities, while major investment banking houses, such as Bear Sterns, created hedge funds.

"As long as house prices were escalating, all parties thrived: homeowners got their dream, brokers got their commissions, lenders got their return, and investors got rich." says Retsinas.

Yun believes that the expansion of subprime mortgages can be traced to the role rating agencies played. "Standard & Poor's and Moody's were saying that subprime loans were safe, which drew in global investors. It was the exuberance about subprime loans that pushed the market higher. Now we know in hindsight that was a big mistake."

Retsinas believes the overall dynamics of the housing market provided the impetus for the rapid growth in subprime loans. "It created a recipe for greed, gullibility, and optimism in the subprime market. It was a conspiracy where everyone winked and nodded at each other, not just the lenders but the borrowers too. Some of the lenders and brokers would loosen underwriting procedures and not ask questions, and the borrowers didn't volunteer any answers. It was fertile ground for people who were speculating, who were avaricious and greedy, both lenders and borrowers."

John Weicher, Director of the Hudson Institute's Center for Housing and Financial Markets, notes that the reaction by lenders was not surprising under the circumstances. "You had lenders who were trying to continue the volume of business they had been experiencing by shading their own underwriting standards. Quite possibly they thought that the slowdown (in 2005) was a blip, thinking that they needed to worry about today now and worry about tomorrow later. The quality of subprime loan originations was worse in 2006 versus 2005, and reflected the deterioration in the underlying housing market. Lenders chose to take higher risk loans as they went along."

Homes Become ATM Machines

Subprime lending was not the only debt instrument growing during the housing boom. As homeowners found the price of their homes spiraling upwards, they discovered that the equity in their homes could be easily tapped for other purposes. Whether it was paying off debts, buying a better car, financing a college education, or traveling the world, home equity loans and lines of credit became ubiquitous.

"We ended up, in the last 10 years, turning our homes into a liquefied asset," says Retsinas. "We made it so easy to take out home equity loans that we thought it gave our home additional value. I've got to say, if one looks back one may say tapping the equity was stupid. But early in the decade if you tapped the equity, it would come back quickly through appreciation. It seemed like a good idea at the time, but it was too good to be true."

Therefore, it's not surprising there was a home equity home boom too. The volume of home equity loans grew from $365 billion in 2000 to a peak of nearly $1.7 trillion in 2005.

As the housing market cooled in 2006, house prices began to fall, wiping out the equity cushion that justified subprime lending. As adjustable rate mortgages began to reset to higher interest rates, more and more people found themselves unable to make their loan payments. The dollar volume of subprime and ARM mortgage loans reaching their interest rate reset dates was huge: $400 billion in 2007 alone. Another $500 billion will be reset in 2008, an average of 450,000 loans each quarter.

Yun believes that "the subprime mortgage collapse was a critical factor" in the rapid and severe decline in the housing market. "Subprime loans are driving foreclosures. More than half of foreclosures are related to subprime loans, even though they make up only 9 percent of mortgages. The problem was lending to buyers who were not sustainable borrowers. It was bad for the community, bad for the country, and bad for the market."

In June, the Mortgage Bankers Association announced that more than one million homes were in foreclosure, the highest rate ever recorded. A record number of loans, 2.5 percent, were in foreclosure, up from 2 percent, or 938,000 homes, at the end of 2007. Records were also set for the number of mortgages with past due payments. Nearly three million home loans were at least one payment past due, while about 737,000 were three months or more past due but not yet in foreclosure.

The problem was lending to buyers who were not sustainable borrowers. It was bad for the community, bad for the country, and bad for the market," says Yun.

Interestingly, nearly half of the homes in foreclosure were concentrated in six states. The building booms in California, Florida, Arizona, and Nevada created enormous unsold inventories, resulting in 368,000 homes in foreclosure, about a third of the total nationwide. Nearly 4 percent of the loans in those states are in foreclosure. The other two states, Ohio with 61,000 and Michigan with 54,000 homes in foreclosure, for a 3.9 percent rate, are attributed to other economic factors, such as rising job losses, particularly in the automotive sector.

While Weicher agrees that the subprime mortgage collapse contributed to the severity of the downturn, he says that "the right way to look at it is that the decline in the housing market, the slowdown in production and purchases, contributed to the subprime mortgage problem. Before we were talking about problems with subprime loans, we were talking about the housing market bubble popping. Sales were not going down, but production was. It was a cyclical downturn in housing production

and sales, a steep one, because we had such a strong boom."

The downturn has been harsh with little relief in sight. Data through March 2008 from the S&P/Case-Schiller Home Price Index shows "continued broad-based declines in the prices of existing single-family homes across the U.S." The national home price index recorded a decline of 14.1 percent between the first quarter of 2007 and the first quarter of 2008, the largest decline in the 20-year history of the index. In comparison, the annual rate of the 1990-91 housing recession bottomed out at -2.8 percent. Six major metropolitan areas (Las Vegas, Los Angeles, Miami, Phoenix, San Diego and San Francisco) have seen drops of more than 20 percent (see table on page 13).

Retsinas believes that the explosion in credit, especially subprime mortgages, helps to explain why the collapse has been so severe. "The market had an injection of steroids in the form of subprime mortgages, which kept the market rushing along, maybe longer than it would have. Instead of a more typical, softer landing . . . the subprime debacle contributed to a much more abrupt and serious downturn in the housing market."

Duncan agrees, but adds another factor. "We did not recognize the significant number of speculators in the market. We all underanticipated just how big a role they were playing. They drove the prices higher because of the speculative nature of their buying, and they exited the market more rapidly when things turned against their investment expectations."

History in the Making?

Is the housing market experiencing a historic collapse? According to Duncan, it depends. "Compared to the depression this is nothing close. We've had a significant downturn, but we also had a significant expansion that was unparalleled as well. If you adjust for inflation, we've had a number of

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See page 18 for details

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periods where house prices have fallen multiple years, which means this is not necessarily historic. However, if you are talking about the downturn in the level of new housing starts, this will be the largest downturn, the largest percentage decline, peak to trough, in housing starts since the official statistics started being collected in 1959."

Weicher tends to agree, but notes that, for most people, this housing market, comes as a major shock to the system. "This is not the worst downturn in my experience. Not as bad as the 1990-91 or the 1981-82 downturns. This is about as bad as the 1973-74 housing downturn. However, it's been a long time since we've had a downturn like this – 17 years – which means a lot of people, like my adult children, don't have a recollection of a downturn like this."

"It's been a long time since we've had a downturn like this – 17 years – which means a lot of people, like my adult children, don't have a recollection of a downturn like this," says Weicher.

Prospects for the Future

Most housing experts predict that the market will begin to stabilize by the end of 2008, and grow in strength by the middle of 2009. But these forecasts are based on a series of assumptions that may not come to fruition. The major factors affecting the recovery will be the time it will take to reduce historic levels of housing inventory and relieve the credit crunch.

The number of houses on the market is at its highest level since WWII, with more than 2.1 million vacant homes for sale, according to the Census Bureau. The National Association of Realtors estimates that there is an 11-month backlog of homes for sale. The U.S. Commerce Department reported that new residential housing starts dropped another 2.3 percent in April 2008, the 26th consecutive monthly decline.

The credit crunch, which has been created by the record number of foreclosures and the tightening of underwriting practices, has made it more difficult for homebuyers to make purchases even as prices drop. "When lenders experience high delinquencies and defaults, they always become more conservative about extending new credit, as is happening now," notes Pollock. About 200 subprime mortgage lenders have failed since early 2007, which has also reduced the amount of mortgage credit in the market.

In spite of these facts, Yun believes that 2008 is a transition year. "In terms of existing home sales activity, the second half will be better than the first half of 2008," he says. "The down-market price adjustments have already occurred in many significant ways, so this point forward there is less of a chance of a price decline." Yun believes the credit crunch will soon come to an end, pointing out that both Fannie Mae and Freddie Mac have announced they were ending their "declining market policy," which required larger down payments and higher credit scores to qualify for loans. The change in policy should increase demand, which will bring down the interest rates on loans, making it easier for more people to qualify for mortgages.

Weicher is not as sanguine about the future, but believes that the cyclical nature of the housing market will continue. "The level is not going to be anything like we were used too – times are not going to be as good as they have been. Another cyclical upturn is a few years away, and it could be a very nice upturn, but we won't see the records we've seen the last few years."

Duncan sums up the future by keeping a focus on the long term. "The good news is that current demographics clearly show that the population and the workforce will grow through the year 2050, and people who work somewhere live somewhere," he says. "There's no problem with the future of housing as a vibrant industry, and housing will be available at affordable prices and reasonable terms."

Noel Card is a freelance writer from Alexandria, Va., who specializes in financial and public policy issues.

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This year's Annual Convention is the most comprehensive yet, featuring a stellar lineup of speakers, expert panels, roundtable discussions, and professional development seminars, providing an in-depth review of the housing market and projections for recovery, key legislative and regulatory challenges facing the industry, tapping into new markets, and professional development tracks designed to help you streamline your business and improve your bottom line. Make plans now to attend this year's event and take advantage of this extraordinary opportunity.

"We have designed this year's convention to address the economy and cyclical housing market from a 30,000-foot vantage point, providing a compass to help businesses navigate the tides of change," said Kurt Pfotenhauer, ALTA CEO. "It is during these difficult times that we must be visionary in our approach, for it is through visionary leadership that we will help shape the future of our profession."

Keynote Speakers

Gordon Bethune, the former CEO of Continental Airlines responsible for spearheading one of the most dramatic corporate turnarounds in U.S. history

Douglas Duncan, Chief Economist for Fannie Mae and a leading expert on the economy, housing and mortgage markets

Ambassador John Veroneau, Deputy U.S. Trade Representative, who has conducted trade relations with Europe and Eurasia, the Middle East, and the Americas, as well as matters involving the World Trade Organization

Ambassador John Danilovich *(invited)*, appointed by President Bush in November 2005 as the CEO of the Millennium Challenge Corporation

TIPAC Political Debate

You won't want to miss this pre-election, gloves-off political debate on Saturday morning between Republican strategist Terry Holt and Democratic strategist Stephanie Cutter.

Professional Development

This year's Convention offers myriad professional development opportunities from which to choose, led by leading experts in the field. One of our five tracks is sure to meet your need for tips, tricks, and knowledge that you can apply in your business immediately.

The Government & Regulations track provides a comprehensive review of current regulations to help ensure that your business practices are compliant.

The Business Acumen track will provide the inside scoop on cutting-edge markets and strategies that will enhance your bottom line, and tell you where to find new business opportunities to improve your revenue stream.

Small Business Best Practices sessions reveal the most effective ideas for managing your staff and preventing internal problems.

The Technology Track will help you click your way to success with Web 2.0 applications and down-market implementation tactics.

Hot Topics will cover RESPA reform and other key issues facing the title industry.

Follow one track, or mix and match—the choice is yours. Many of the sessions will offer continuing education credit, so be sure to visit the ALTA Web site for full session information and CE/CLE updates.

AMERICAN LAND TITLE ASSOCIATION
PRESENTS
TIPAC DEBATE
SATURDAY, OCTOBER 18, 2008
ALTA General Session • Grand Ballroom
The Grand Hyatt Kauai Resort & Spa
Republican Strategist Terry Holt
vs.
Democratic Strategist Stephanie Cutter

Professional Development Sessions include:

1. A Call to Action: New Market, New Strategies
2. Leading Your Business in Times of Change
3. Ethics in the Title Industry & the ALTA Consumer Initiative
4. Why Title Insurance Matters: Our Value Proposition
5. RESPA Reform and Impacts on the Title Industry
6. HR in Today's Marketplace: Preserving & Promoting Morale
7. How to Capitalize on Niche Markets, Including Multicultural Business
8. Strategies for Tapping into the Reverse Mortgage Market
9. Detecting Mortgage Fraud
10. Building a Defalcation Detection & Prevention Program
11. Using the Down Market to Retool Your Production Process
12. Understanding Digital Title & Escrow
13. Social Networks & Google

Special Events & Activities

Sitting in sessions all day soaking in information can lead to brain overload. Evidence suggests that taking a break for some fresh air and fun can actually enhance learning. The convention location on the beautiful island of Kauai provides amazing opportunities to rejuvenate. We've planned some special activities for attendees and spouses to get out and explore.

On Wednesday, there's a sailing excursion on a deluxe 55-foot catamaran to the secluded coves and prime snorkeling locales along the spectacular Napali Coast.

On Thursday, a Hidden Waterfall Kayak and Nature Hike will take you on an adventure to the 240-acre Hule'ia National Wildlife Refuge, where such motion pictures as Raiders of the Lost Ark and Jurassic Park were filmed.

On Friday, experience the grandeur of Kauai on a helicopter tour of the island. Also on Friday, the Michael F. Wille Memorial TIPAC Tournament will be held at the Poipu Bay Golf Course designed by Robert Trent Jones, Jr., featuring breathtaking views from every hole.

On Saturday, you'll have an opportunity to take the catamaran snorkel sail in case you missed the one on Wednesday, or take a tour of Waimea Canyon, known as the "Grand Canyon of the Pacific." To cap off the convention, on Saturday night there will be a reception and Polynesian Pa'ina, with food, music, and dance celebrating the culture of the island.

SCHEDULE AT A GLANCE

Wednesday, October 15

9:00 am – 5:00 pm	Committee Meetings
5:30 pm	Ice Breaker Reception/Exhibit Showcase

Thursday, October 16

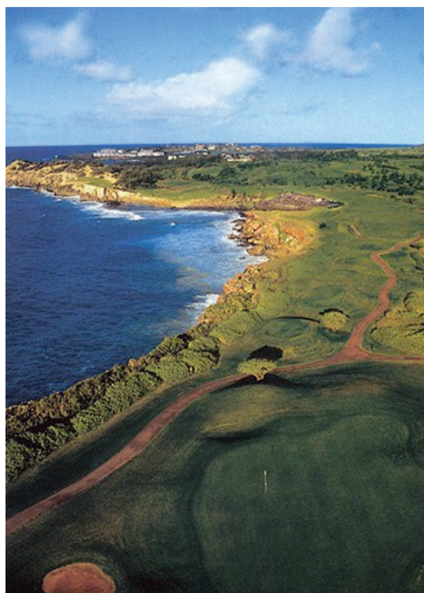
7:00 am – 1:30 pm	Exhibit Showcase
8:00 am – 10:00 am	Opening General Session
10:15 am – 11:45 am	Agent & Underwriter Section Meetings
1:45 pm – 4:30 pm	Professional Development Sessions

Friday, October 17

7:00 am – 1:00 pm	Exhibit Showcase
8:30 am – 10:30 am	General Session
10:00 am – 11:45 am	Vendor Sessions
12:00 pm	Mike F. Willey Memorial TIPAC Golf Tournament
12:30 pm – 1:45 pm	Professional Development Sessions

Saturday, October 18

9 am	Closing General Session
11:30 am	Title Triumph Tournament & Lunch
6:00 pm	Closing Reception & Luau



ALTA Has Negotiated the Best Travel Rates

Some of you might feel that attending a conference in Hawaii represents too much of an expenditure given the current market and may be thinking of forgoing the convention this year. But it's not as expensive as you may think! ALTA has negotiated discounted hotel rates as low as $256 per night (the hotel is booking fast, so secure your reservation as soon as possible). We've also arranged for travel discounts with American Airlines and Avis. Plus, registration fees for members are the same as last year. So register now by visiting *www.alta.org*.

The Grand Hyatt Kauai Resort & Spa

Discover paradise at Grand Hyatt Kauai Resort & Spa. The lush grounds and infinite amenities of the Four-Diamond hotel in Kauai present myriad options for guests to enjoy. Play championship golf or tennis, go snorkeling or kayaking in the amazingly beautiful lagoons, sail on a catamaran, take a helicopter tour, or explore the natural wonders of the island. At day's end, indulge in a reviving treatment at ANARA Spa, savor fine dining or delight in an authentic Luau. The resort's Camp Hyatt is a fun, active program designed for children ages 3 to 12.

Getting Approval to Attend This Year's Convention

During these challenging economic times, many companies are scaling back on attendance at conferences and events. This year's Convention is jam-packed with information, tools and tips that will help companies navigate these tough times. But how do you persuade your boss that attendance is worth the expense? Here are a few suggestions:

- Review the conference materials and focus on the course of study and sessions that will address your company's problems or plans.
- Prepare an estimate of the costs, including registration fees, airfare, hotel, meals, and miscellaneous expenses.
- Identify a backup person or procedure to ensure coverage in your absence. Develop a strategy to handle important business while you are away.
- Seek approval immediately. An early request shows that you are a careful planner.
- Put your request in writing. Include benefits to the company, the information you expect to gain, and how it relates to the company's plans.
- Share the Convention program with your boss and ask for his/her input on the priorities for you to focus on.
- Follow up within a reasonable time. A gentle reminder or an offer to discuss the convention may lead to approval.
- After the convention, bring back vendor brochures and information. Share what you learned with your co-workers.
- Finally, you might consider offering to pay part of the expense, particularly if you want to add a few extra days.

BY JOHN GOSSELIN

running your business

Navigating the Untapped World of Reverse Mortgages

With the rising cost of health care, unanticipated increases in inflation, pension plans going under, and the unpredictable nature of Social Security, more seniors are looking toward their homes for the cash they need to support their fixed income. Others have decided that, rather than leave their assets to their children, they would rather enhance their golden years with long-awaited and well-deserved travel. Regardless of the reason, the reverse mortgage market is burgeoning.

A reverse mortgage is not the same as a second mortgage or equity loan and does not incur debt for the "borrower." Rather than pay the lender a monthly amortized amount, as with forward mortgages, the lender pays the homeowner a monthly amount. Reverse mortgage loans are generally written for no more than one-half to two-thirds the value of the home, and the repayment amount can never exceed the value of the home.

To qualify, at least one person on the home's title must be 62 years old, and the home must be the owner's primary residence. In addition, the home must be owned outright or the reverse mortgage loan must be used to pay off the outstanding mortgage balance.

According to the Federal Housing Administration (which insures most reverse mortgages), by September of 2005, homeowners had taken out approximately 43,000 reverse mortgages, up from approximately 37,800 the year before. The demand continues to rise, with 71 percent more loans taken out in 2007 than in 2006. The increasing demand for reverse mortgages, coupled with the decline of the forward mortgage market, represents a significant opportunity for members of the title industry.

Unique Characteristics of Reverse Mortgage Borrowers

Reverse Mortgage borrowers have some distinct differences from typical borrowers. Those who grew up during the Great Depression, and/or who have managed to live free and clear of debt for many years, are extremely debt adverse. Often borrowers are widows whose husbands used to handle the finances and they now find themselves doing it alone. So a good deal of education, patience, and hand-holding may be involved.

It is important for title companies to know about the various reverse mortgage products available to help their customers understand them. The title company is also responsible for educating loan officers and loan processors on the reverse mortgage process, specifically when it comes to issues of title clearance. Failure to properly instruct loan officers and loan processers can easily derail the transaction.

Reverse mortgages are more common in older, established neighborhoods because the likelihood is greater that a home has been paid off, which allows for a larger reverse mortgage for the borrower.

Common Title Issues

More title clearance problems are seen on reverse mortgages than forward mortgages. This is usually due to the fact that many reverse mortgage borrowers have lived in their homes for many years. Because of this, there are several common title-clearance issues to be aware of.

For example, probate issues are common when dealing with an elderly borrower. A common scenario is when the borrower's spouse has passed away, and the title has not yet passed to the surviving spouse. Clearance of this issue is largely dependent on whether the deceased spouse had a will. If there was a will, the home would be distributed as instructed in the will through the probate process. If the deceased spouse dies without a will, the house would pass according to state Intestacy laws.

Multiple marriages can also cause title problems during a reverse mortgage transaction. In these circumstances, a divorce decree must be provided. The language in the decree has the ability to transfer property to the ex-spouse. Additionally, the divorce decree determines whether proceeds of the home are owed to the former spouse.

Tax liens are another common title issue in reverse mortgages. Generally, all tax liens are priority-over-lender liens, which add complexity to title issues. Tax issues are especially prevalent in reverse mortgages because senior borrowers are more likely to have difficulty paying their property taxes and any equity loans taken out on the home.

In some cases, the title search finds that the home's deed has never been recorded. Usually this happens when the deed was presented to the borrower, who was unaware of the need to record it at the Registry of Deeds.

> Despite the hands-on work involved in reverse mortgage transactions and the potential for complex title issues, the reverse mortgage market represents tremendous potential for the title industry.

Untapped Market

Despite the hands-on work involved in reverse mortgage transactions and the potential for complex title issues, the reverse mortgage market represents tremendous potential for the title industry. There are an estimated 78 million baby boomers who have or are about to turn 62 this year, and baby boomers today are projected to live longer than any other generation of Americans. These numbers mean there will be an ever increasing number of eligible seniors who are facing a lifespan they didn't financially plan for.

The reverse mortgage business is challenging and requires special skills and knowledge, but the effort is well worth it because of the opportunity to help make people's gold years, well, golden.

John Gosselin is the principal attorney of Gosselin Law in Winchester, MA. He is also a member of ALTA's Real Property Records Committee.

tech forum highlights

A panel of Las Vegas-based title, real estate, mortgage, and legal professionals shared what they look for in a title company.

ALTA's 11th annual Tech Forum kicked off Sunday April 13, at The Mandalay Bay in Las Vegas. This year's Forum provided managers and technology professionals with a fresh analysis of technology tools, cultural diversity, and generational differences. Tech Forum attendees learned how their companies can evolve and succeed in even the most challenging of times.

Keynote speaker Scott Klososky invigorated the audience with his visionary approach to individual and company success, and introduced some of today's most exciting Web-based technologies.

Chip Greenlee of Adobe Systems discussed the innovative uses of PDF technology and demonstrated all that PDF can offer to the financial services industry.

ALTA CEO, Kurt Pfotenhauer, shared his perspective on the importance of technology in the title insurance industry.

Prizes, promotions, demonstrations and the buzz of thirty exhibitors created a strong environment for discussing new technologies with forward-thinking title professionals.

Tech Forum Educational Sessions gave attendees the opportunity to earn CE Credits while exploring important topics like business continuity, paperless technology, and the relationships between title professionals and county recorders.

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BY ROB MOORE

Race to eRecord

Runners, take your mark. Get set. Go! And so in the early 1990s began the technological innovation and adoption that has resulted in today's race to eRecord. But what started out as a well-intentioned 100-yard e-dash to the county has turned into a cross-country marathon.

Technology Track

So who's winning the race and where's the finish line? More on that later. Let's start with a look back at what's gotten us into the race in the first place—technology. Were it not for the Internet and the evolution of Software as a Service (SaaS), eRecording would still be on the starting blocks. SaaS is a web-native application delivery model that evolved from the Application Service Provider (ASP) model of the dot.com era. Thanks to SaaS, a software vendor can provision a centrally hosted application to any number of customers over the Internet.

Early eRecording architectures required recording jurisdictions and their customers to invest hundreds of thousands of dollars in hardware and software systems. Today the SaaS architecture and delivery components such as Web browsers and Web services allow a title company to subscribe to an eRecording service and utilize existing equipment—a PC, scanner, and high-speed Internet connection—to begin eRecording right away.

Qualifying Rules

Technology was in the blocks and ready to go in 2003, but where was the industry? Not surprisingly, technology had jumped the gun and was spinning its wheels without the legal foundation required to chart a course and provide common ground rules. In June of 2000, Congress enacted the "Electronic Signatures in Global and National Commerce (ESIGN) Act. ESIGN set the stage at the Federal level, but states were not yet on board. Enter NCCUSL—the National Conference of Commissioners on Uniform State Laws, a 116-year-old organization dedicated to the drafting and implementation of uniform legislation across state boundaries. NCCUSL drafted and shepherded state adoption of two acts: the Uniform Electronic Transactions Act (UETA), which has since been passed by 44 states and the District of Columbia; and the Uniform Real Property Electronic Recording Act (URPERA), introduced to address perceived deficiencies and vagaries in UETA and since enacted by at least fifteen states, with legislation pending in another dozen states this year. These two pieces of legislation, UETA and URPERA, give county clerks and recorders the legal authority to electronically record real property instruments.

Cultural Hurdles

With eRecording technology and legislative acts charting a viable course through most states, the field appeared to be set—except for one key stakeholder: the runners who weren't convinced that the race was worth competing in. After all, property records had been successfully transmitted to county courthouses for hundreds of years via (express) mail, runner, and courier services. Why sideline traditional delivery services in favor of a virtual courier? Overcoming the reluctance of the human psyche—cultural hurdles—was (and is still) a major barrier to eRecording adoption and

progress. County clerks and recorders and their staff were concerned about trading paper and people for images and email. Put another way, they had grown accustomed to the comfort and security of handling paper and visiting with their customers across the counter. And for those not raised on Windows, the fear of unfamiliar technology was a real threat.

Early providers of eRecording services spent significant time and travel as unpaid industry consultants, speaking to county clerk and recorder associations and meeting with them in their offices in states across the country. Fortunately, the adoption curve can be applied to every population. Everett M. Rogers in his 1962 book, *Diffusion of Innovations*, theorized that innovations would spread through society in an S curve, as the early adopters (16%) select the technology first, followed by the majority (68%), until a technology or innovation is common.

Among the ranks of county clerks and recorders, the 2% to 3% that qualify as innovators followed by the 13% to 14% Rogers called early adopters are now integrating eRecording systems with their indexing and archiving systems, deploying SaaS technology to move the county recorder's office squarely into the digital age. According to the Property Records Industry Association (PRIA), approximately 300 of the 3,600 recording jurisdictions nationwide are currently recording, or just over 8%. According to Rogers Adoption Curve, the industry is still in the early adoption phase of eRecording.

Document Relay Standards

Innovative clerks and recorders were off and running, but the industry still lacked uniform guidelines for technology deployment and integration—the standards that enable disparate systems to seamlessly transfer data, and for multiple eRecording service providers to submit into a single county. PRIA undertook that role, creating a framework for defining electronic transactions and a schema for XML data transfer.

The staff also noticed a decrease in the number of filing errors—particularly those involving incorrect fees.

The transaction framework consists of the following three models. Model I: A wet-ink signed paper document is converted into an electronic image for round-trip recording; Model II: A wet-ink signed paper document is converted into an electronic image and is transmitted along with accompanying indexing data (such as grantee / grantor) and may or may not be electronically signed and acknowledged (notarized) for round-trip recording; and, finally, Model III: An electronically generated document is electronically signed, acknowledged, and transmitted for round-trip recording—never being rendered to paper.

According to PRIA, most electronic submissions are Model II. The dominance of Model II transmissions is reflective of the current state of the real estate industry's transition from paper to electronic processes. For example, a common Model II eRecording scenario might consist of a document being electronically generated, then reduced to paper for signing and acknowledgement, and finally scanned for electronic submission. PRIA is working closely with MISMO (the Mortgage Industry Standards Maintenance Organization), the standards authority for the mortgage lending industry, to develop a single set of standards for all segments of the real estate finance transaction. PRIA 2.4.1 is the current version, with version 3.0 expected out by year's end.

How the Race is Run

Utah County, located 30 miles south of Salt Lake City, has a population of approximately half a million people, and the county processes approximately 750 land record documents per day. In January of 2003 Utah County became an early adopter of eRecording technologies. County Recorder Randall Covington initiated an eRecording pilot to address the queuing, delays, and customer frustra-

tion his office was experiencing. The pilot quickly evolved into a full-scale eRecording deployment, and Mr. Covington and his staff have never looked back.

Not only were they able to eliminate the end-of-day queues and resulting customer frustration, but they also reduced their postage budget by returning recorded document packages electronically. What's more, they experienced increased efficiency and productivity by reducing the number of time-consuming over-the-counter transactions and the need to move and scan paper. The staff also noticed a decrease in the number of filing errors—particularly those involving incorrect fees.

On the other side of the counter, Bruce Bartlett, President of Bartlett Title, was focused on how to streamline operations so that his four-year-old title company could take full advantage of growth opportunities in a burgeoning market. Every time Bartlett Title closed a transaction, an employee had to travel to Mr. Covington's office to record the pertinent documents. Recording trips ate into the company's resources; fuel and transportation costs were an issue, not to mention the time spent waiting in line. Bruce characterized the recording process as "the most frustrating part of the transactions."

When Bruce learned about eRecording, he decided to give it a try. While evaluating the value of the service, Bruce calculated that eRecording was saving his company between $100 and $200 per transaction—not including savings in fuel and other travel expenses. He also discovered that he was able to close many transactions before his customers ever left his office. Within minutes of bringing the necessary funds, customers often had the keys to their new property in hand. And as adjoining counties adopted eRecording, Bruce was able to justify expanding Bartlett Titles services geographic footprint.

Race Sponsorship

Traditionally, document submitters (title companies, lenders, attorneys, lien filers, etc.) have shouldered the economic responsibility for trans-

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mitting documents to the recorders office. The submitter would walk documents to the courthouse, hire a runner or courier service, or send them via express delivery or postal service. Regardless of the delivery method, the submitter owned the cost and responsibility of getting the documents to the counter. In the digital age that model has been altered as some counties and county consortiums have elected to build an eRecording system that effectively pushes the counter out to each submitter's desktop. This implementation method has been dubbed a portal. The portal provides submitters with access to participating counties—typically counties within a given state.

Portals are typically state / taxpayer subsidized and provide a submitter interface that enables submitters to file documents either at no charge or for a fee. Portals have the advantage of overcoming the cultural hurdles referenced earlier because they are county driven. As an example of that benefit, Iowa legislated an eRecording portal implementation in 2003 and over a five-year period has integrated with virtually every county in the state. In addition to Iowa, New Jersey and Missouri have launched eRecording portals, and several other states are evaluating portal projects.

Portals tend, however, to discourage the participation of commercial eRecording service providers because their free or heavily subsidized submitter interface eliminates economic incentive from the portal market. They also tend to lack the submitter marketing and support services provided by commercial eRecording providers because they are government driven. And they are limited in scope to counties participating in the portal initiative, usually counties

Should You Compete?

Odds are, you're still on the sideline wondering if eRecording is right for you. To help you assess the availability and value of eRecording to your business, consider the following:

1. **Legality**. Is eRecording legal in your state? For a current list of states that have enacted UETA and URPERA, visit the following links on the NCCUSL Website:
   UETA:
   www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ueta.asp
   URPERA:
   www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urpera.asp

2. **Accessibility**. Is eRecording available in the jurisdictions where you frequently record? Contact the clerks and recorders offices in those counties to find out if they are accepting electronically filed documents. If you frequently record in counties in multiple states, try contacting PRIA or a commercial provider of eRecording services for a list of eRecording counties.

3. **Feasibility**. What is the return or payback on your investment in eRecording? To run a simple calculation, do the following.
   a. Estimate your current submission costs, which may include the following: document transmission via courier / runner service or (express) mail, check processing for recording fees, approval tracking, error correction, document filing, office supplies to package documents for submission, and document delivery to customer and lender postclose.
   b. Add all costs in (a) for a typical document and subtract the cost to eRecord the same document (document submission fee). The remainder is your variable cost savings (if positive) or incremental eRecording cost (if negative).
   i. If the remainder is positive, divide it into your fixed eRecording costs (such as subscription fee and cost of account setup) to determine how many documents or you must file before you achieve payback. You can then divide that number by the average number of documents you file per week to determine how many weeks will transpire until you achieve payback.
   ii. If the remainder is negative, weigh it against the marketability considerations raised below.

4. **Marketability**. What is the opportunity cost of not implementing eRecording? In other words, if you elect to eRecord and your competitors do not—or conversely—if you elect not to eRecord and your competitors do, what incremental advantages will you either realize or forego? This is a question of competitive advantage and is a more strategic and qualitative assessment.

within a given state—which may not be an issue for local title concerns.

Other county officials have opted to structure a commercial eRecording environment that mirrors traditional economic and document delivery roles and responsibilities. In such counties, recording officials qualify as commercial eRecording service providers (the electronic equivalent of a FedEx® or UPS service) and enable those providers to integrate with their eRecording systems. County officials then rely on the commercial interests of the eRecording service providers to market eRecording services to submitters and to provide a submitter interface along with configuration, training, and support services. eRecording providers typically charge submitters a subscription fee to access their services, and a submission fee each time a document is successfully recorded.

This economic model mirrors the fee submitters historically paid a courier or postal service. And just as with traditional delivery fees, the eRecording fee can be passed on to the end customer in most states. The commercial model has the advantage of offering submitters access to technology and services that are continually improved by competitive forces. The commercial model also provides submitters with access to an ever expanding nationwide eRecording network that should eventually include every recording jurisdiction. One disadvantage of this model is the burden it places on the county to integrate with multiple service providers.

For the time being, both the portal and commercial methods and the advocates thereof are effectively sponsoring the adoption of eRecording. In the long run, free market forces and government regulation will determine which method—or a hybrid thereof—wins the day.

Winners Circle

Speaking of winners, we're finally back to that question we started with: Who's winning the race and where's the finish line? Not surprisingly, the real winners thus far are those that strapped on their virtual track shoes early on—the innovators and early adopters of eRecording services.

Among recording jurisdictions, you would expect large jurisdictions such as Philadelphia County, Pennsylvania, to be an early adopter. After all, with a population of approximately 1.5 million and an annual recording volume of some 270,000 documents, the county is under constant pressure to drive efficiencies into their operations and look for ways to better serve their customers. But even small counties like Doniphan County, Kansas, population 8,000, have found value in deploying eRecording services. According to Susan Shuster, Register of Deeds for Doniphan, "It may not seem practical for a small county like ours to eRecord; after all, our recording volume at 1,500 documents per year is relatively low. However, when we considered the benefits to our customers—many of whom have to travel great distance or mail in their documents—we decided to give it a closer look. The low cost and ease of deployment made the decision for us."

Likewise among submitters, those who have embraced the technology early are enjoying a competitive advantage, both in terms of streamlined operations and enhanced customer services. Theresa Flores, Post Closer for Lawyers 1st Title in Broward County, Florida, is now able to record documents in minutes rather than

weeks: "I scan in the documents and . . . submit them to the County Recorder and get them back the very same day." To underscore the value to their customers, Theresa referenced a situation she has experienced where new homeowners are anxious to put up a fence around a property they've just purchased—a process that would typically take four to six weeks. "Now they can show their recorded deed to the fence company the same day as the closing. Their fence goes up right away."

Finish Line

With market development still in the early adoption phase of the Rogers Adoption Curve, the eRecording finish line is not yet in sight. Not until all 3,600 recording jurisdictions are online and eRecording a property instrument is as ordinary as scheduling a FedEx® delivery will we see the tape. But in the meantime, counties and their customers are making great strides in the race to eRecord.

Rob Moore is Vice President of Marketing for Simplifile, LC in Povo, UT.

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