

January/February 2009

Official Publication of the
American Land Title Association

TitleNews

Taking Command in Turbulent Times

*What to Expect from the
Obama Administration*

Inside This Issue:

HUD Releases Final RESPA Rule

Prudent Practices for Managing Deposit Accounts

eClosings: An Integral Part of Paperless Lending Strategies

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April 19 - 21	2009 Business Strategies Conference (Tech Forum 2.0) Grand Hyatt San Antonio, Texas
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STATE CONVENTIONS

February 27	Alaska
April 16 - 18	Oklahoma
April 30 - May 2	New Mexico
May 3 - 5	Iowa
May 14 - 17	South Carolina (Palmetto)
May 17 - 19	California
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June 11 - 14	Texas
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September 10 - 13	Maryland
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from the publisher's desk

The Great Depression was defined by 48 months of negative GDP growth and unemployment reaching 25%. We are nowhere near a Great Depression, but our economy continues to experience accelerated job losses, growing home foreclosures, vastly diminished credit availability in all sectors, and significant stock market losses. Add to the list of America's challenges two wars and growing political instability around the globe and you've got a pretty good idea of what will be keeping President-elect Obama awake at night.

No doubt fueled by an appropriate sense of urgency, Obama has moved with record speed to assemble his cabinet and his team of economic advisors. He has picked "Who's Who" list of the best and brightest, which is the sign of a self-confident executive. His challenge will be to harness the inevitably outsized egos of a gifted group of men and women and make them pull together as a team.

Americans elected Mr. Obama because he promised change. My prayer is that he has the courage to tackle what he can change, the patience to resist trying to change things he can't, and the wisdom to know the difference. Two realities dominate the economic crisis and both are beyond the reach of government to immediately fix.

First, after multiple speculative bubbles, we are in the midst of a massive, world-wide, multi-trillion dollar deleveraging. Second, there is not just unpredictability in the markets, there is no trust. Whether it is the scams of a Bernard Madoff or rating agencies run amok, investors can no longer trust traditional sources of information. It is misguided to think that we can somehow address these underlying structural problems through an \$850 billion "economic stimulus package" of brand new government spending allocated by a Congress which, every time it takes a breath, inhales to the word "pork" and exhales the word "barrel." Increased government spending will no doubt cushion a hard fall, but fall we must until supply and demand rebalance and until new institutions are created to ensure the reliability and transparency of pricing information.

Our cover story on page 10 explores some of President-elect Obama's challenges and scours his record for clues to what we can expect from the new Administration. With the situation changing on a daily basis, the article necessarily presents a snapshot in time and will inevitably be dated in places; however, it presents a good lens through which to evaluate much of what we will see in coming months.

Of significance to our members was HUD's release of the final RESPA rule this past November. ALTA hosted a webinar on December 3rd to give our members an opportunity to hear directly from HUD executives on what the new rule means for our industry. During the call, ALTA members were also able to ask questions and comment on some of the provisions of the rule. If you were not able to join the call, please read the summary article on page 20 or go to our web site to listen to the recording of the conference call. Also stay tuned for more guidance from ALTA as we grapple with implementation issues surrounding the new Rule.



The article on page 24, *Prudent Practices for Managing Deposit Accounts in the Current Economic Climate*, describes some of the fundamental business practices agents can put in place to reduce their exposure and that of their clients in the event of a bank failure.

This issue's News section on pages 7 and 34 includes important news on the state of the housing market and actions federal agencies are taking to stem the tide of record foreclosures.

And finally, we are proud of all of our members for continuing to give back to their communities despite these harsh economic times. Character is never measured when the times are easy, only when the times are tough. The title industry has character, and we encourage you to let us know of your activities so that we can include you in *The Title Industry Gives Back* section, located on page 22.

Enjoy this issue of *Title News*, and Happy New Year.



– Kurt Pfothauer

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We The People . . .

Washington, D.C. is an interesting place . . . for a lot of reasons, but is particularly unique in its focus and preoccupation with the congressional calendar. Every two years great amounts of time and brain cells are expended trying to figure out the power alignments as a new Congress is convened. After the elections, there are caucuses to elect party leaders, committee assignments for new members of Congress, chairmanships are reordered . . . and the entire city watches with great interest.

Not so often, but of greater fascination is the scene that unfolds when a new President prepares to occupy the White House. After the general election votes are counted, the transition teams swing into gear. Speculation . . . and eventually confirmation . . . turns the attention to new cabinet members and advisers to the new President.

The historic election of Barack Obama has generated enormous interest . . . and now the administration of the 44th President of the United States begins.

The last time a sitting United States Senator moved to the White House was in 1960 when John F. Kennedy inspired a new generation of Americans with a call to service above self. By droves, young people enlisted in the Peace Corps to help others in faraway lands . . . and in the process boosted the worldview of the United States as a caring nation. In the first months of his administration, President Kennedy challenged us to marshal our energy and American ingenuity to put a man on the moon before the end of the decade, thereby restoring American prestige in the Cold War era. And President Kennedy put the power of the Presidency clearly on the side of racial equality.



A new President *can* make a difference. (Yes he can).

My expectation is that President Obama will now govern with the same eloquence and inspiration that energized his campaign . . . and all of us should be open to the call.

Because that's what will make us the *United* States of America.

It seems like such a long time has passed since we really felt like one nation joined in a common purpose. With all of our urgent problems, it seems so senseless to continue in partisanship and bickering. Our country is strong enough . . . and honorable enough . . . to have a civilized system of checks and balances while simultaneously working together for our nation's common good.

The Constitution of the United States . . . our contract with one another . . . begins with three important words . . . *We the People*.

We the People means we have elected a leader. *We the People* means we consent to be governed. *We the People* means we expect quality leadership from our elected officers . . . and sincerely desire . . . *A More Perfect Union*.

The past is over. The "new" America starts today. It starts with *We the People*.

Together, let us resolve that *We* are ready to hear a new call to service. *We* are ready to be challenged to make America a better place. *We* are ready not only to wish our new President well in his work, but also to join with him in the hope and promise of a better tomorrow.

We the People deserve nothing less.

Godspeed, Mr. President.

A handwritten signature in black ink, appearing to read "Mike Pryor". The signature is stylized with a long, sweeping underline.

– Mike Pryor

TIPAC 2009 Opportunities

The 2008 TIPAC campaign was a huge success. As of November 20, 642 individuals have contributed a total of \$185,000. To date this year, 352 people that contributed last year have not contributed this year. Imagine what our total would be if everyone consistently gave year after year.

We, the Trustees, worked as a team to reach out to our members, and our members have responded in record numbers to help us reach our goal of \$200,000. They understand that advocacy is the most important effort ALTA advances on their behalf. We are confident that by the time you read this we will have exceeded our goal.

With your support we accomplished more in 2008 than ever before, and we need your help again in 2009. Specifically, we need your help identifying TIPAC Trustees in these states: Alaska, Delaware, District of Columbia, Hawaii, Maine, Mississippi, Nevada,



North Carolina, Oregon, Pennsylvania, South Carolina, Vermont and West Virginia.

We also need your help in implementing company campaigns by our underwriter and agent members. We will prepare you to approach company staffs about the importance of TIPAC and how their contributions aid the industry and their business. Campaigns are common practice within other industries and are a very effective way to get the word out to every member of ALTA.

Please contact Alyssa Marois or John Voso, Jr., to discuss both very important objectives for 2009. John Voso can be reached at his office 1-800-321-0520 or on his cell 216-408-8866, or at jvoso@oldrepublictitle.com. Alyssa Marois can be reached at 202-261-2935 or at alyssa@alta.org. Thank you.

HUD Releases Final RESPA Rule

The Department of Housing and Urban Development (HUD) released its final rule on the Real Estate Settlement Procedures Act (RESPA) on Nov. 12, 2008. HUD accepted many of the recommendations made by ALTA in its comments, testimony before Congress, and numerous meetings with the agency. Significantly, HUD has shortened the GFE and HUD 1/1A; dropped the closing script, volume discounts, and the "optional" reference to owners' title insurance; ex-

tended average cost pricing to all settlement service providers; and provided a right to cure for amounts in excess of tolerances and for HUD 1/1A errors. On the negative side, the rule retains disclosure of the agent/underwriter premium split on the HUD 1/1A. ALTA hosted a "webinar" on Dec. 3 so that HUD representatives could explain the new rule to members and answer specific questions about the ramifications for title industry (see separate story in this issue).



HUD Launches New Web site on Financial Literacy

HUD launched a new Web site, *My Money, My Home, My Future*, to help consumers improve their financial literacy, sustain healthy homeownership, and achieve financial security. The Web site provides a range of interactive

resources to inform users about the importance of financial literacy, including a Self-Assessment Tool, online games, and informative classes. The site is located at www.hud.gov and www.fha.gov.

FHFA Submits First Report to Congress

Federal Housing Finance Agency (FHFA) Director James B. Lockhart submitted to Congress the first report as a Federal Property Manager (FPM) detailing actions the agency is taking to prevent unnecessary foreclosures. Section 110 of the Emergency Economic Stabilization Act of 2008 (EESA) directs FPMs to develop and implement plans to maximize assistance for homeowners and encourage servicers of underlying mortgages to take advantage of programs to minimize foreclosures. FHFA is a designated FPM in its role as conservator for Fannie Mae and Freddie Mac.

In a letter to Congress dated Dec. 2, 2008, Director Lockhart detailed the streamlined loan modification program (SMP) the agency announced in November. The letter also described the unified efforts of Fannie Mae, Freddie Mac, private lenders and servicers, FHFA, the Treasury Department, and Federal Housing Administration (FHA). Accompanying the letter were FHFA's monthly Foreclosure Prevention Report, quarterly Mortgage Metrics Report, and the Agency's "Plan to

Maximize Assistance for Homeowners and Minimize Foreclosures."

"The streamlined modification program is meant to reach as many seriously delinquent borrowers as possible to give them a chance to save their homes and begin restoring their credit," Lockhart wrote in the letter. "It's a bold attempt to move quickly in defining a nationwide program beyond just Fannie Mae and Freddie Mac that can quickly and easily reach many of these troubled borrowers, thereby stabilizing those families and the communities and neighborhoods in which they live."

The letter and report cover the first 60 days since enactment of EESA. Going forward, the report will be submitted monthly. To read the letter and accompanying documents, go to www.fhfa.gov.



MBA National Delinquency Survey

The Mortgage Bankers Association's National Delinquency Survey reported the delinquency rate for mortgage loans at the end of the 3rd quarter of 2008 at 6.99 percent, up 58 basis points from the second quarter of 2008 and up 140 basis points from 2007 on a seasonally adjusted basis. The delinquency rate

includes loans that were at least one payment past due but did not include loans somewhere in the process of foreclosure. The percentage of loans in the foreclosure process at the end of the third quarter was 2.97 percent, an increase of 22 basis points from the second quarter of 2008 and 128 basis points from 2007.



Federal Conference '09

The 2009 Federal Conference will be held March 2-4, 2009, at the Willard InterContinental Hotel in Washington, D.C. Key federal and state regulatory leaders will provide expert analysis on the state of financial markets in 2009,

including the impacts on the title industry. There will also be a special session with representatives from the NAIC Title Insurance Working Group focusing on compliance requirements for the national standard data collection effort.



We welcome your Letters to the Editor for inclusion in Title News. If you have comments about this or previous issues, please write to ssullivan@alta.org

LTI Offers Video-based Training

ALTA's Land Title Institute is offering video-based training in an updated DVD format. The videos provide title-specific training on topics relevant to title industry employees. All necessary materials are included on a companion informational CD-ROM, facilitating ease of storage and reducing the possibility of loss. For more

information on this and other educational materials, visit LTI at www.landtitleinstitute.org.



Business Strategies Conference (Tech Forum 2.0)

Mark your calendars for ALTA's Business Strategies Conference (Tech Forum 2.0), to be held April 19-21, 2009, at the Grand Hyatt San Antonio. Discover the latest technologies designed to help title businesses compete in

the rapidly changing world of eMortgages, eClosings and eRecording.

For more information and to register for these conferences, visit the meetings section at www.alta.org.



NAR 2008 Housing Forecast

In a forecast released Dec. 9, 2008, by the National Association of Realtors® (NAR), the trade group projected a 9.3 percent drop in the median price of resale homes and a 7.8 percent drop in the price of new homes for 2008.

Sales of resale homes were projected at 4.96 million, sliding 12.3 percent from 5.65 million in 2007. Sales of new single-family homes were projected at 486,000 for the year, compared to 775,000 in 2007, a decline of 37.3 percent.

Title Premiums Continue to Decline

ALTA released financial results for the 3rd Quarter of 2008, reporting an operating loss of \$332.1 million.

Title insurance premiums written totaled 1.7 billion, compared to 3.5 billion for the same period in 2007, marking the 10th consecutive quarter in which title premiums written declined from the prior year's equivalent quarter.

For the first nine months of 2008, total premiums written were 7.9 billion, compared to 11 billion for the same period in 2007. The breakdown is as follows: premiums written-direct totaled 1.5 billion, premiums written with



non-affiliated agencies totaled 4.7 billion, and total premiums written with affiliated agencies totaled 1.7 billion.

Despite these struggles, the title industry remains in a very strong financial position, with Admitted Assets of more than \$9.5 billion including more than \$8 billion in Cash and Invested Assets. For more information, visit www.alta.org/industry/financial.cfm.

Taking Command in Turbulent Times

What to Expect From the
Obama Administration.

The word “bailout” was looked up so often at Merriam-Webster’s online dictionary that its publishers have announced that it is the “Word of the Year” for 2008. Some of the words on the rest of the list of most sought-after definitions reflect the mood of the country today: “trepidation,” “precipice,” and “turmoil.” Bailout supplants the 2007 “Word of the Year” as selected by the American Dialect Society: “subprime.” >>

by Noel Card



And no wonder, as both government and business leaders are increasingly describing today's economic conditions in terms once reserved for the Great Depression. And the major economic indicators confirm that we are in a serious recession that may be deep and long and global.

What's a president-elect to do? That, in Washington, is the billion

dollar question that has quickly become the trillion dollar question. thner, head of the Federal Reserve Bank in New York. Obama will rely heavily on former Treasury Secretary Larry Summers to direct the National Economic Council, saying that Summers "will be by my side, playing the critical role of coordinating my administration's economic policy." Also on the team will be Christina Romer, a respected economic historian from

ensure a smooth transition. However, on January 20 the transition will end, and Barack Obama will be sworn in as the 44th President of the United States. What we can expect from an Obama administration may depend on the challenges it faces.

The Growing Economic Challenge

The news over the past six months has been a breathtaking parade of financial failures and economic decline. From the collapse of the subprime mortgage market through the failure and subsequent government takeover of Fannie Mae and Freddie Mac, the decline in the value of real estate has been a driving factor. "Toxic" mortgages and mortgage-backed securities have contributed to the bankruptcy or forced sale or merger of a slew of major companies, including Lehmann Brothers, Washington Mutual, Merrill Lynch, and Bear Sterns. There were also the multibillion dollar government bailouts of insurance giant AIG and CitiGroup, the nation's third largest bank. As David A. Moss, a public policy professor at Harvard Business School, observed, "When all else fails, government does come in."

There have been 172 "major" bankruptcies through October, which projects to an annual total of 206, according to *Bankruptcy.com*. The record for bankruptcies is 383 in 2001, though the prospect of setting a new record in 2009 is a real possibility. Already on the bankruptcy list for 2008 are well-known companies such as Aloha, ATA, and Frontier airlines, and retailers Circuit City, Linens and Things, and the Sharper Image. Robert Saloman of the Stern School of Business at NYU notes that, "Bankruptcies continue to be con-

The record for bankruptcies is 383 in 2001, though the prospect of setting a new record in 2009 is a real possibility.

dollar question that has quickly become the trillion dollar question.

President-elect Barack Obama must feel like John F. Kennedy did shortly after his inauguration, when he remarked, "When we got into office, the thing that surprised me most was to find that things were just as bad as we'd been saying they were."

The Obama Administration faces a daunting challenge. His transition team initially kept the tradition of his campaign, "no drama Obama," by being tight-lipped when it came to information about what his administration will do on a whole host of issues. However, Obama has become increasingly visible on the issue of economic recovery, showing that he will be engaged from day one of his presidency.

He named his economic team in mid-November, picking a group of experienced economists to pull the levers of the federal government's economic machinery come January. At the head of the team is Tim Gei-

thner, who will head the Council of Economic Advisers, and Peter Orzag, who earned bipartisan kudos as Director of the Congressional Budget Office, as the new Director of the Office of Management and Budget.

Obama also named Paul Volcker, a former Federal Reserve chairman, to head the new Economic Recovery Advisory Board, which is supposed to offer "independent, nonpartisan information, analysis, and advice to the President as he formulates and implements his plans for economic recovery." How this new advisory board will interact with the other government entities charged with economic policy is anyone's guess as it appears there are overlapping roles. As one writer in *The Economist* magazine quipped, "Might too many economists spoil the recovery?"

Obama and his team have been working behind the scenes with Congress and the Bush Administration to develop policies that will



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centrated in industries that are close to the struggling consumer. That is no surprise. I expect bankruptcies to become more broad-based as this recession continues to spillover to the broader economy.”

In addition to a gyrating stock market, with the Dow Jones Industrial Average dipping below the 8,000 mark for the first time in nearly six years in October, the major economic indicators have all shown an economy in rapid decline.

- According to the U.S. Bureau of Economic Analysis, the U.S. economy has been in recession since December 2007. While the traditional definition of a recession is two consecutive months of negative economic growth, the BEA uses a broader definition that includes growth, production, and real income indicators over time.
- The U.S. Bureau of Labor Statistics (BLS) reported that non-farm employment fell by 533,000 in November, the largest one-month decline in nearly 34 years, increasing the unemployment rate to 6.7 percent. “This is a dismal jobs report,” said Keith Hall, commissioner of the BLS. “There’s very little in this report that’s positive. This is maybe one of the worst jobs reports the Bureau of Labor Statistics (founded in 1884) has ever produced.” Employment in 2008 has dropped by 1.9 million jobs in the first 11 months of the year; 1.3 million of the jobs were lost from August to November alone. In comparison, a total of 1.6 million jobs were lost in the recession of 2001.
- The Consumer Price Index (CPI) decreased one percent in October



following very little change in September and August, according to the BLS. The decline in October was the largest one-month decrease since publication of the CPI began in February 1947.

While a reduction in the inflation rate is usually a cause for celebration, such a drastic reduction in the CPI could be an indication that the economy is entering a deflationary period, which is considered by many economists to be worse than inflation. Deflation is when demand for products from consumers and businesses evaporates as prices fall, because they expect to pay less later on. The result is that producers have trouble selling their products, they go bust, unemployment rises, reducing demand further. There is also an increased risk of default on debt, depressing the availability of credit. The cycle reinforces itself, leading to a downward spiral of negative economic growth.

- Consumer spending decreased in October by one percent, driven down by decreases in prices, adding to the concerns about deflation. This was the largest decline in consumer spending since Septem-

ber 2001. This decline occurred in spite of the fact that personal income rose 0.3 percent in October, following a 0.2 percent increase in September, far outpacing the change in prices, and leading to a one percent rise in real income in the period, the most since September 2005.

There was no good news for the real estate industry either, as the major indicators demonstrated that the housing market continues its free fall as credit has dried up and the housing glut continues to grow.

- The third-quarter report for the S&P Case-Shiller Home Price national index showed a record 16.6 percent decline compared with the third quarter of 2007, passing the previous record of 15.1 percent set in the second quarter of 2008. The index of ten major cities fell a record 18.6 percent while its 20-city index dropped a record 17.4 percent.
- The U.S. Census Bureau/HUD report on privately-owned housing starts in October was at a seasonally adjusted annual rate of 791,000. The number of starts is

It's All About the Details in the STOP FRAUD Act

The subprime mortgage mess was on Senator Obama's radar screen back in February 2006, when he first introduced the STOP FRAUD Act (he reintroduced it in 2007).

"Mortgage fraud and abuse are costing thousands of Americans their hard-earned life savings and their dream of homeownership," said Senator Obama. "As the number of foreclosures skyrocket and the housing market becomes more vulnerable, we must establish stiff penalties to deter fraud and protect consumers against abusive lending practices."

During the presidential campaign, the STOP FRAUD Act was the centerpiece of his "Mortgages, Homeownership and Bankruptcy" agenda, and he has mentioned the bill numerous times since the election as a policy he will pursue when he takes office.

If the STOP FRAUD Act becomes law, either all or in part, it will have a direct impact on the way the title insurance industry conducts business. The bill reveals that Obama is not shy about elevating issues to a national level and using the power of the federal government. These are the major elements of the Act:

- Create a federal definition of mortgage fraud for the first time.
- Establish new federal criminal penalties of up to \$5 million and 35 years in prison for "mortgage professionals" found guilty of fraud. "Mortgage professionals" include real estate appraisers, real estate accountants, real estate attorneys, real estate brokers, mortgage brokers, mortgage underwriters, mortgage processors, mortgage settlement companies, mortgage title companies, mortgage loan originators, and any other provider of professional services engaged in the mortgage process.
- Mortgage professionals will also be subject to civil penalties for committing fraud, in "an amount equal to the sum of all finance charges and fees paid or payable by the natural person, financial institution, or purchaser who was defrauded."
- Create a new Mandatory Reporting Requirements program that will obligate all lending professionals to report "any suspicious activity by an individual or entity" to the Department of the Treasury.
- Direct the Department of Justice (DOJ) to "establish a system by which mortgage brokers, lenders, title company employees, mortgage appraisers, securities and bond rating agencies, and other authorized mortgage professionals may register and receive updates from Federal law enforcement agencies" about suspicious activities in the mortgage market and news about mortgage fraud-related convictions.
- Authorize \$40 million in grants from the DOJ to state and local law enforcement agencies to support housing fraud task forces and coordination of efforts among federal, state and local agencies. It also adds \$5 million to the DOJ budget to fight mortgage fraud.
- Direct the DOJ to develop a Debarred or Censured Mortgage Professional Database, that can be accessed by authorized banks, mortgage professionals, and consumers to determine the federal and state bar status of mortgage professionals.
- The Department of Housing and Urban Development (HUD) will be charged with creating a program, to "provide information, advice, counseling, and technical assistance to tenants, homeowners, and other consumers with respect to mortgage fraud" or any other activities that could lead to an increase in foreclosure by individuals.
- Up to \$10 million in HUD demonstration grants to state appraisal agencies to improve the monitoring and enforcement of housing appraisal regulations, with funding preference given to states with high rates of mortgage fraud.
- A borrower with a subprime mortgage (a loan with high-risk characteristics) will receive additional rights to challenge the lender's lending practices in foreclosure proceedings.

While the goals of the STOP FRAUD Act have received support from many industry groups, including the Mortgage Bankers Association and the American Society of Appraisers, it has raised hackles among many in the real estate sales community. The concern is that the definition of fraud is too broad and would incite a "tsunami of litigation" by borrowers who saw the value of their property decline.



either delinquent on their mortgage payments or in foreclosure.

The Government to the Rescue

Keeping track of the enacted and proposed bailout packages coming out of the Bush Administration and Congress has become a cottage industry in the nation's capital. Billions of dollars in bailouts has risen to 1.5 trillion in just a matter of months.

The Emergency Economic Stabilization Act of 2008 created the Troubled Assets Relief Program (TARP), which gave the Secretary of the Treasury up to \$700 billion to spend on buying up "toxic" mortgage assets. However, Treasury Secretary Hank Paulson shifted the direction of the program by committing most of the first half of TARP's spending to cash infusions into financial institutions, with the other half to be spent

38.0 percent below the October 2007 rate of 1,275,000.

it was the lowest sale rate since January 1991, when the rate was 401,000.

- The National Association of Realtors (NAR) reported that existing home sales declined 3.1 percent in October to a seasonally adjusted annual rate of 4.98 million units. The inventory of existing homes for sale, a leading indicator of the strength of the market, fell modestly from 4.27 million in September to 4.23 million in October. Lawrence Yun, Chief Economist for NAR, estimates that it will take 10.2 months to clear out the backlog of existing home inventory; under normal market conditions it should take 6 to 7 months to clear out an inventory that large.
- New home sales fell to an annualized rate of 433,000 in October, down 5.3 percent from the revised 457,000 annual rate reported in September, according to the U.S. Census Bureau. That's a 40 percent reduction from a year ago, and

■ "The news this week has only reinforced the fact that we are facing an economic crisis of historic proportions."

- President-elect Obama

- According to the Mortgage Bankers Association, a record 1.35 million homes were in foreclosure in the third quarter, pushing the foreclosure rate up to 2.97 percent, a 76 percent increase from a year ago. The number of homeowners who fell behind on their mortgages was also at a record rate of 6.99 percent, up from 5.59 percent for the third quarter 2007. About one in ten borrowers in the country is

by the Obama Administration.

In late November the Treasury Department announced a new program, to be run through the Federal Reserve Bank, which will spend as much as \$600 billion to purchase mortgage-backed securities issued by Fannie Mae, Freddie Mac, Ginnie Mae, and the Federal Home Loan Bank. Another \$200 billion was committed to the purchase of securities backed by consumer credit, such as credit

card debt and automobile, student, and small business loans. The goal of the new bailout program was to break the logjam in the credit market, generating new credit for consumers and business.

Add to that the ongoing discussions of some type of bailout or help for the U.S. auto industry (on top of the \$25 billion already committed to retooling manufacturing facilities), other industries lobbying for aid, and another economic stimulus

tion. While details are sketchy at this time, he has indicated he is considering a massive new spending program, costing 300 to 700 billion dollars, for infrastructure development projects to help jump-start the economy. He described the goal of the program as “creating and saving 2.5 million jobs - jobs rebuilding our crumbling roads and bridges, modernizing our schools, and creating the clean energy infrastructure of the 21st century.”

■ Spurred by the growing problems in the subprime mortgage market, Senator Obama first introduced his Stop Fraud Act in 2006 and reintroduced an expanded version in 2007

package being discussed on Capitol Hill, make it appear that there may be no end to the government’s bailout binge.

It is also clear that President-elect Obama knows that the economy will be the most important issue on his plate when he takes office. “The news this week has only reinforced the fact that we are facing an economic crisis of historic proportions,” Mr. Obama said in a radio address in late November “We now risk falling into a deflationary spiral that could increase our massive debt even further.”

Obama has asked his economic team to develop a stimulus package to be ready early in his administra-

The Obama Agenda on Housing and Mortgage Issues

While the bailouts and infrastructure spending packages will form the core of his economic recovery efforts, Obama had previously announced a six-part program to address critical issues in the housing and mortgage areas. While it is unclear which, if any, of these policies will be enacted early on, they do provide insights into the approaches an Obama Administration may take in the future.

Stop Fraud Act

Spurred by the growing problems in the subprime mortgage market, Senator Obama first introduced his Stop Fraud Act in 2006 and reintro-

duced an expanded version in 2007. The act was also a centerpiece of his presidential campaign’s agenda on housing and mortgage issues. The act provides a federal definition of mortgage fraud for the first time as well as imposing severe criminal and civil penalties for anyone committing fraud. There are also provisions to increase funding for federal and state agencies, as well as new requirements for “mortgage professionals,” including employees of title insurance companies, to report suspicious activities, as well as a new database of “debarred or censured” mortgage professionals that would be available to the public. (See sidebar story.)

Create a Universal Mortgage Credit for Lower-income Homeowners

Providing help to lower-income homeowners through a 10 percent universal mortgage credit is near the top of the list of proposals. The credit will provide an average of \$500 to an estimated 10 million homeowners, the majority of whom earn less than \$50,000 per year, and do not itemize deductions on their taxes. “This proposal carries a price tag at a time when the budget is not in great shape to spend more,” said John Bancroft, executive editor at *Inside Mortgage Finance*, in *Investor’s Business Daily*. “Many people owe thousands of dollars on their mortgage and \$500 barely scratches the surface.”

Create a HOME Score for Borrowers. The idea behind a Homeowner Obligation Made Explicit (HOME) score is to provide potential borrowers with a “simplified, standardized borrower metric (similar to APR),” for home mortgages. While the HOME score is intended to allow individuals to easily com-

Shaun Donovan Named as HUD Secretary

President-elect Barack Obama nominated New York City housing commissioner Shaun Donovan as Secretary of HUD. Donovan was Deputy Assistant Secretary for Multifamily Housing at HUD under the Clinton administration, and served as acting FHA Commissioner during the presidential transition.

Donovan, 42, was appointed Commissioner of the New York City Department of Housing Preservation and Development (HPD) in March 2004 by Mayor Michael R. Bloomberg. He managed HPD's \$7.5 billion New Housing Marketplace Plan to build or preserve 165,000 units of affordable housing.

Before joining the Bloomberg administration, Donovan was managing director of FHA lending and affordable housing investments for Prudential Mortgage Capital Company. He was a visiting scholar at New York University, where he researched and wrote about the preservation of federally-assisted housing. He was also a consultant to the Millennial Housing Commission, created by the U.S. Congress, on strategies for increasing the production of multifamily housing.

Donovan holds Masters degrees in Public Administration and Architecture from Harvard University.

"As the former acting Commissioner of HUD's Federal Housing Administration, Commissioner Donovan is well aware of the issues facing American homeowners and the need for HUD to continue being a major force in helping stabilize the mortgage market," said HUD Secretary Steve Preston.



Direct HUD and Treasury to Modify Mortgage Terms

During the campaign Obama promised that he would instruct the Secretaries of the Treasury and HUD to use their existing authority to more aggressively modify the terms of mortgages. Obama was an early supporter of the Hope for Homeowners Act, which was signed into law in July and is designed to help as many as 400,000 homeowners avoid foreclosure. The law allows qualified borrowers to replace their current mortgages with a 30-year fixed-rate loan for up to 90 percent of the current value of the home. To be eligible for the program, borrowers must have spent more than 31 percent of their monthly incomes on their mortgages as of March 1, 2008, and the loan had to be originated before January 1, 2008. The FHA is authorized to insure \$300 billion such loans starting in October, 2008. However, since it is up to lending institutions to decide if they want to participate in the program, the program's effectiveness is in doubt, especially under current economic conditions. "Servicers are going to be reluctant to take the government up on their offer," according to Mark Zandi, chief economist at *Moody's Economy.com*. "The earliest they'll start taking them up on it is early next year. And even then it's likely to be modest."

Enact a 90-day Foreclosure Moratorium.

A crowd-pleaser on the campaign trail, Obama's proposal for a moratorium on foreclosures is still part of his economic agenda, though it has not been mentioned much of late. His proposal would require financial institutions that benefit from the financial rescue plan to observe a 90-

pare various mortgage products and understand the full cost of the loan, including taxes and insurance, there is little detail on how it would actually work, or how it differs from current loan disclosure documentation.

Close the Bankruptcy Loophole for Mortgage Companies

Perhaps the most controversial of his proposals is the elimination of the prohibition that prevents bankruptcy courts from modifying the mortgage payments of an existing loan on a principal residence. Obama believes that the subprime mortgage industry, "which has engaged in dangerous and

sometimes unscrupulous business practices, should not be shielded by outdated federal law." This proposal has come before Congress before and has been defeated because many lawmakers believe that it would drive up the cost and interest rates of future loans. "Obama's plan for permitting judges to remodify the loan terms could lead to unintended consequences of raising mortgage rates for a new set of homebuyers," says Lawrence Yun of the National Association of Realtors. "If a new set of buyers are hindered, from higher rates, then the housing problems will be prolonged."

day foreclosure moratorium for any homeowners living in their homes who are making good-faith efforts to pay their mortgages.

Fiscal Relief for States and Localities to Avoid Tax Increases.

The sharp decline in the value of real estate will lead to reduced state and local government revenues from property taxes. With most states operating under balanced budget amendments, the budget crunch will lead to either significant reductions in services or painful property tax increases. Obama has proposed the federal government provide \$25 billion to the states that, along with the new emergency facility to address the state credit crunch, will help state and local governments continue to provide essential services without raising taxes or fees.

What's Next on the Horizon?

What to do about Fannie Mae and Freddie Mac is going to be high on the agenda for both the Obama administration and Congress early next year. What is clear is that their



present structure doesn't work. Rep. Barney Frank (D-Mass.), chairman of the House Financial Services Committee, has signaled that a major overhaul of both will happen, but what form they will take in the future

proactive, consumer-oriented, and willing to use the full force of the federal government to restructure both public and private institutions involved in the financial and real estate markets.

■ Let us hope that the “Word of the Year” for 2009 will not be “depression” or “deflation.”

is unclear. Congress will likely take a look at the 12 regional Federal Home Loan Banks, which lend money to more than 8,000 commercial financial institutions, to see if changes in the way they operate are also needed.

Let us hope that the “Word of the Year” for 2009 will not be “depression” or “deflation,” though the financial system is in such turmoil that a total collapse of the global financial system is not out of the question. On the plus side, the amount of international cooperation that is being exhibited in the effort to restore stability to the global economy is unprecedented. Because of the critical role the American economy plays in the world, President Obama will be at the center of these efforts.

With a Congress under his party's control, a near veto-proof majority in the U.S. Senate, a strong showing in the election, and a 78 percent approval rating on how he is handling the transition, Obama will have the political capital and influence needed to enact dramatic changes. Based on the agenda he ran on during the campaign and his statements since the election, we can expect him to be

While he has not publically stated his strategy for his first hundred days in office (the traditional “honeymoon period” for new Presidents during which they have the best chance to have their agenda enacted), there is some evidence that he plans to present to Congress a large, comprehensive legislative package covering a wide-range of topics, including initiatives on the economy, energy, global warming, technology and education, with the challenge to pass them all by July.

Whether the economic crisis will allow him to be so bold remains to be seen. However, what is clear is that by the end of 2009, Obama will have kept his campaign promise to change America.



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

HUD Releases Final RESPA Rule

On November 12, 2008, HUD released its final RESPA rule. To help members understand the new rule and its implications for the title industry, ALTA hosted a “webinar” on Dec. 3 with HUD representatives Barton Shapiro, deputy director; Ivy Jackson, director, RESPA and Interstate Land Sales; and Laura Gipe, compliance specialist.

Conference participants submitted questions in advance and during the session, a summary of which follows.

The agent/underwriter split is a contractual matter, and no other line of insurance is required to disclose this information. Why did HUD make this a requirement?

The GAO report recommended this disclosure, which HUD has authority to require.

What if the settlement agent doesn't know? Is it their responsibility to get this information?

Attorneys and escrow agents are not exempt and are responsible for disclosing that information.

Who is responsible for determining if tolerances have been exceeded?

The settlement agent must list items on the GFE that were provided by the lender, run the calculations, and determine if tolerances have been exceeded.

It is then the responsibility of the lender to reimburse the borrower.

Who contacts the lender for a reimbursement?

Either the settlement agent or the borrower can do it. The lender will want to respond within 30 days because HUD will be conducting regular audits.

So the borrower or settlement agent contacts the lender, and the lender says it will take care of it within 30 days. In order for the HUD-1 to compare to the GFE, do we have to redo the documents, and, if so, who pays for the second settlement?

You only need to reissue the HUD-1, which doesn't require signatures. Both the lender and borrower get a copy of the new HUD-1. This should encourage greater communication between the lender and settlement agent because it's better to have

the information up front so you don't get into technical issues.

If the lender reimburses the borrower directly and doesn't notify the settlement agent, is the agent still responsible for the new HUD-1?

If you don't know about it, you're not responsible, but the lender is going to want a new HUD-1 in case the regulator pulls the file.

Recording fees aren't known until the actual documents are recorded. If the lender estimates them at \$100, and they are actually \$200, is the lender responsible for the overage?

If the lender provided the estimate then the lender is responsible, but this is one of the items that can be averaged if the lender is using this mechanism.

We didn't see signature lines on the HUD-1. Was this a mistake?

There is no statutory requirement for signatures on the HUD-1.

For cost averaging, can you better define what a category is? Is it a city, county, state?

The settlement service provider determines the class of service, geographic area, and the type of loan, limited to a specific time frame, and establishes an average cost or charge.

Where are attorney's fees disclosed on the GFE and HUD-1?

If the attorney is the closing agent, fees are included in the settlement charges. If the seller has an attorney, the charge is listed outside the column but itemized in title charges. If the borrower is bringing an attorney to

Effective Dates

January 16, 2009

- Servicing Disclosure Statement (Section 6)
- Required use
- Average cost pricing
- Technical changes

January 1, 2010

- New GFE
- New HUD-1/1A
- Everything else

the table in addition to the settlement agent, it would be listed under miscellaneous.

Transfer taxes vary by local jurisdiction. What if the lender doesn't know them and doesn't include them on the GFE? Is this the responsibility of the lender or the settlement agent?

It's the responsibility of the lenders to know what those are. If they aren't sure, they should find out.

If there is a change because a municipality raised its fees, is the lender allowed to issue a new GFE?

If it exceeds the tolerance, the lender will want to issue a new GFE

To avoid mistakes in transferring information to the HUD-1, should settlement agents require lenders to fill out that form?

Lenders may choose to, but it's the settlement agent's responsibility to transfer the information, the same as it's done today.

Since there is tremendous responsibility on the lenders, wouldn't they want to steer everything to an affiliated business to avoid mistakes?

The lender will want to steer business to settlement agents who provide good service, accuracy, and communication.

If a mortgage broker filled out the GFE, who is responsible for overages?

If the lender accepts the GFE, then the lender is responsible.

Do the same tolerances apply to seller's charges or just the borrower's?

The GFE requires that charges be listed that the borrower paid. Things that the seller agrees to pay must still be listed for comparability, but then shown as a credit.

If the borrower chooses the title company, is the lender responsible for meeting the tolerance?

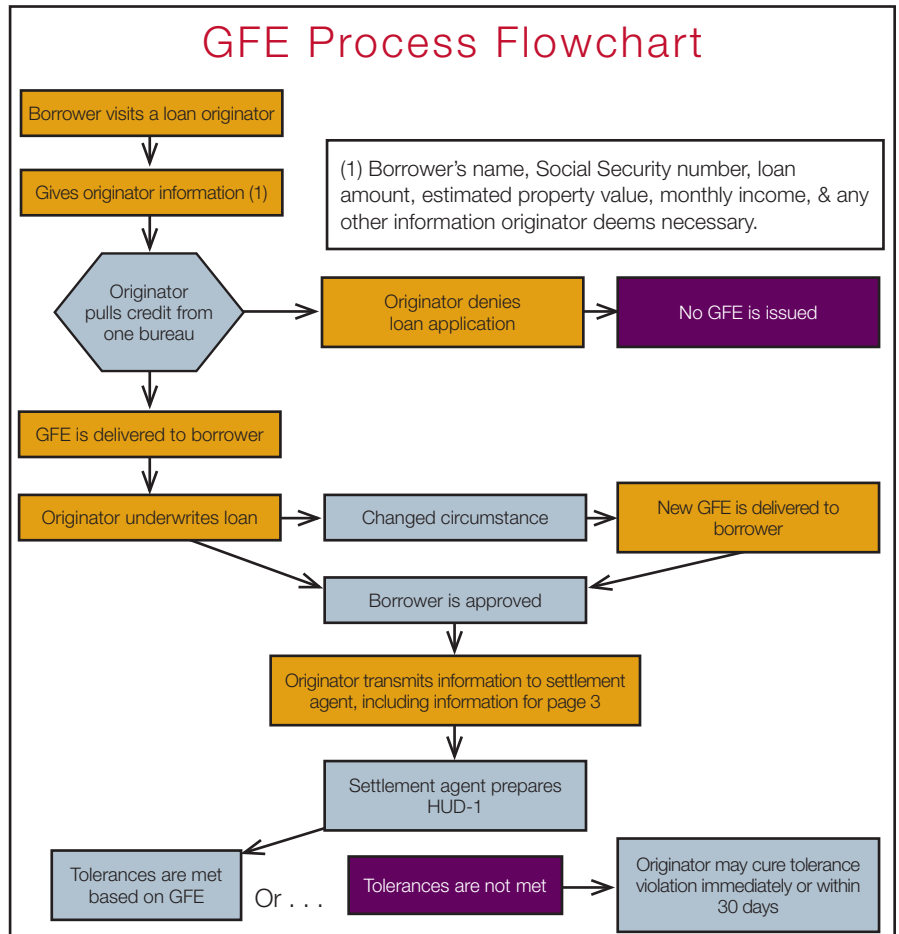
If the borrower chooses the provider, the lender is not responsible.

The audio and web presentation is available at ALTA's Web site on the RESPA resource page.

Key Changes from the Initial Proposal

- No Closing Script
- Shorter GFE
- Single application process
- Removed volume-based discounts
- Added 30 day right to cure
- HUD-1 disclosure of key terms

GFE Process Flowchart



The Title Industry Gives Back

A 50-year Legacy of Community Service

When John Dozier took a part-time job at The Columbian Title and Trust Company while attending high school, he had no idea he would be dedicating the next 50-plus years to the company.

After high school he served in the military as artillery survey sergeant with the 738th Field Artillery Battalion in Korea, rejoining Columbian upon his return. He worked his way up in the company and was

appointed executive vice president and chief executive officer in 1976, and president in 2003. Columbian was acquired by First American Title Insurance Company in 2004, and in 2006 all existing agency affiliations were transferred to United General Title Insurance Company (which had been acquired by First American). Dozier now serves as an agency representative and consultant for First American.

Dozier has spent his entire career giving back to his community. He served six consecutive terms as Mayor of Silver Lake, Kansas. He

was charter president of the Silver Lake Lions Club, zone chairman of Lions International, chairman of the Local Government Committee of the Greater Topeka Chamber of Commerce, chairman of Junior Achievement of Topeka, chairman of the Better Business Bureau of Northeast Kansas, director of the Associate Council of the Topeka Homebuilders Association, and director of the Kansas Chamber of Commerce and Industry. He currently serves on the board of directors of Downtown Topeka, Inc.

He has also been active in ALTA, previously as chairman of ALTA's Title Insurance Executive Conference in 1968, and currently as chair of ALTA's State Legislative and Regulatory Action Committee (SLRAC). He is also a member of ALTA's Government Affairs Committee.

"In his decades of service and leadership in ALTA, John has shown a constancy and dedication that is a hallmark of member involvement," said Ed Miller, chief counsel and vice president of public policy for ALTA. "John is a great example of meaningful association leadership and industry advocacy."

Dozier was recently recognized by both the Missouri and Kansas land title associations for 50 years of service to the title industry.

Congratulations, John, for your dedication and tireless effort to make your community a better place.



A John Dozier was recently recognized for his 50 years of service to the title industry.

Stewart Employees Provide Hope During the Holidays

In the spirit of the holiday season, Stewart's National Title Services (NTS) is involved in giving back to local communities across the country.

stewart

- Susan Wilkins, NTS strategic alliance manager for the GMAC account, and Clarissa Izzo, assistant administrator for the GMAC Account, participated in their local (Corpus Christi, Texas) Operation Christmas Child. Operation Christmas Child delivers millions of gift-filled shoe boxes to needy children around the world. For many of them, these are the first gifts they have ever received. Wilkins and Izzo decorated and filled 20 shoe boxes with toys, school supplies, and hygiene items that will be given to boys and girls 5 to 9 years old. A donation of \$7 is also inserted in each box. "This is our second year to participate, and it is a great way to start the holidays by remembering those who are less fortunate," said Wilkins.
- NTS-Seattle made a generous donation to the Forgotten Children's Fund, which provides gifts to needy children and their families. "Instead of sending holiday cards, we are making this donation on behalf of all of our customers," said associate senior underwriter and manager John Jones. Additionally, national business development vice president for NTS-Seattle Valerie

Kolytiris has made a contribution to the Stop Cancer organization, which provides funding for the National Cancer Institute research centers.

- For the second year in a row, Sandy Hollenbeck, national business development vice president for Stewart Relocation Services (SRS), has made a donation to the Omaha Food Bank to support the group's continued efforts to provide food for needy individuals in Nebraska and western Iowa.
- In lieu of holiday gifts to customers, Amanda Nicholson Forbes, national business development of NTS-Houston, made donations to help further the charitable efforts of these worthy organizations: Girls Incorporated, Habitat for Humanity, Brighton-The Center for Inclusive Communities, and U.S. Troop Care Package.
- Associate senior underwriter and manager of NTS-Los Angeles Mike Choy made a contribution to KidWorks, an organization dedicated to meeting the needs of young people and their families in urban Hispanic neighborhoods through education, character formation, and personal development.

First American Helps Homeowner Fire Victims in Southern California

First American Title Insurance Company has a long history of helping individuals and communities during disaster-related events. In November the company announced that it would replace recorded mortgage documents, property tax information, recorded deeds, and tax assessor maps at no charge for homeowners who lost their homes in the recent fires in Southern California.



First American

In addition to complimentary document replacement, First American offered a 40 percent discount on title insurance for fire victims securing a new deed of trust or a construction loan on those lost properties located within a government-declared disaster area.

"We recognize that California is not immune to natural disasters, and we want to help those homeowners who lost their homes by providing any information that may be useful in recovering from these devastating fires," said Mark Sachau, senior vice president, California and Hawaii division operations for First American Title Insurance Company.

Title News would like to hear from members who have helped out in their community. Please send an e-mail to ssullivan@alta.org, and we will follow up.

Prudent Practices for Managing Deposit Accounts in the Current Economic Environment

For many years, title insurance companies have specialized in eliminating, mitigating, and insuring the risks incurred by individuals and legal entities when they buy or sell real property. But the ongoing financial turmoil has highlighted a different set of risks companies have not had to confront in some time: the risks bank failures create for title agents and the clients and customers they serve.

BY JOE DRUM, ESQ.

The Federal Deposit Insurance Corporation (FDIC) insures deposits up to \$250,000 per person in a single institution, with some complicated exceptions to that general rule. The \$250,000 cap represents a temporary increase in the insurance ceiling, set to revert to the old \$100,000 limit at the end of 2009.

Given the level of home prices, the escrow account created for a typical residential purchase could easily exceed the insurance limit either in itself or when aggregated with funds held by a party to the transaction in the same institution in which the

escrow account is opened. Should the depository bank fail, the loss of any portion of the escrow funds would affect everyone involved in the transaction – buyers, sellers, brokers, lenders, and, of course, the title agent responsible for establishing the escrow account; although the party who would ultimately bear the risk of the uninsured portion of the loss would depend on a number of factors.

Tornado Problem

Is this a “tornado problem” -- meaning it is rare but devastating to someone who gets hit -- or a problem that

is broader in scope? And what is the long-term concern?

The escrow problem is less like a tornado and more like a perfect storm. Tornadoes are more common but also arguably more limited in scope, likely to target a single community, an isolated neighborhood, and sometimes even a lone property. The perfect storm involving escrow accounts could hit any communities in which real estate transactions and bank failures collide, potentially affecting scores of transactions involving escrow accounts in multiple banks in many different communities simultaneously.

The scope of the problem and its impact are impossible to predict. Treasury Secretary Henry Paulson has acknowledged, “There is no question that additional banks will fail.” If one can attach a number to that prediction -- estimate how many banks will fail in how many communities -- one could determine approximately how great the escrow threat may be. Much is still unknown about the financial crisis -- where it will lead, how much damage it will cause, and when it will end.

What Fundamental Business Practices Can Agents Put Into Place to Hedge Their Bets Against a Disastrous Outcome?

The most important steps are those agents take well before a bank failure, beginning with the obvious: Make sure the financial institutions in which they open escrow accounts



are federally insured and financially sound. Four steps in particular are recommended to agents:

1. Exercise due diligence to assess the financial strength of banks before opening escrow accounts

2. Agents should move deposits from institutions these sources and others rate as “low.” But they should not hang their entire analysis on these ratings. One should be reminded, however, that the

of financial health, such as the ratings published by nationally recognized statistical rating organizations (NRSROs) such as *Moody’s*, *Standard & Poor’s* and *Fitch*. Agents should select banks rated ‘A’ or better by one of these NRSROs. These organizations will often produce separate ratings for a bank-holding company and its subsidiaries and for individual classes of securities. All of these ratings are potentially relevant to the assessment of a bank’s financial stability and risk of failure.

3. To address questions about whether the funds held in escrow accounts are insured, dot all the procedural I’s and cross the T’s. Make sure the accounts are properly registered with the banks as being for an escrow or custodial purpose and comply fully with the disclosure requirements for the accounts. For funds deposited on behalf of one or more individuals or entities to be insured as the deposits of those individuals or entities, the accounts must meet three requirements:

- The nature of the account must be disclosed in the bank’s deposit account records (for example, [Law Firm Name] Trust Account or XYZ Title Agency, Escrow Account);
- The name and ownership interest of each depositor/owner must be readily ascertainable from the deposit account records of the bank or the records maintained by the escrow agent in good faith and in the regular course of business; and
- The agency or custodial relation-

■ Exercise due diligence to assess the financial strength of banks before opening escrow accounts in them.

in them. To avoid putting too many eggs in a single basket that could become a shaky basket, agents may want to consider creating accounts in a variety of banks that are financially sound. This raises the obvious question: How do you know if a bank is financially sound? The FDIC website (www.fdic.gov) contains a list of several websites that use a comparative rating system to characterize the safety and soundness of banks. These sites can be found at: www.fdic.gov/bank/individual/bank/index.html

data posted on these websites are dated and provide only a snapshot of a particular point in time -- not a comprehensive or definitive report on an institution’s financial condition. Also remember that quantitative analysis of any information, however accurate, requires a large quota of qualitative common sense.

While periodic reviews of a bank’s rating are helpful and warranted, agents should seek additional sources of information and consider other markers

ship must be genuine. That is, the deposits must be owned by the named owners and not by the agent or custodian.

Christopher Hencke, an FDIC attorney, explains how title agents can comply with certain of the disclosure requirements (detailed in 12 C.F.R. 330.1 et. seq.) in the following excerpts from an August 29, 2008, letter responding to questions posed by Kurt Pfothenauer, CEO of the

dian' or 'Title Company Escrow Account,'" Hencke notes. "The title company can satisfy the second requirement by maintaining its own records as to the interests of the parties (buyer, seller, lender)..." Readers can find the entire letter at: www.alta.org/images/pdf/08-09-04_FDIC_letter.pdf.

The second disclosure requirement (maintaining deposit records acceptable to the FDIC) may pose a considerable challenge for agents,

clearly discloses the nature of the account in the bank's "deposit account records." Agents may also consider providing a written statement to this effect, but they should ask their underwriter how the statement should be worded and have legal counsel review the document.

The importance of clear records and a solid paper trail cannot be overstated. In a bank failure, the FDIC will determine the ownership of funds in an escrow account based on a review of "records maintained in good faith and in the regular course of business" by the attorney or custodian. Following a bank failure, agents would have immediate access to their own records. If these records do not precisely follow FDIC guidelines, agents will likely find themselves in an endless queue, along with all the other customers with incomplete or missing records, waiting for the FDIC to complete its review of the bank's records, which may not be well maintained. The clock on affected transactions will be ticking, and time may run out for the buyers and sellers involved. Even agents with their own records in hand will face a queue, but good records should help expedite the process.

Another area of potential concern related to the recognition of the individual nature of deposits in an account arises if the account is periodically "swept" into other investments, where this process is lawful and according to local custom, in order to increase the interest earned on the account. If this is the case, agents should talk to the bank and consult with an attorney about the manner in which the sweep accounts are

■ The importance of clear records and a solid paper trail cannot be overstated.

American Land Title Association.

"Under the FDIC insurance regulations, [f]unds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principals(s). 12 C.F.R. § 330.7(a). In other words, the insurance coverage 'passes through,' [which] means that the funds belonging to each owner would be aggregated with any other funds held by the same owner at the same insured depository institution and insured up to the [FDIC] limit."

This "pass-through" coverage is not available, Hencke explains, unless the three conditions outlined above are met. "The title company can satisfy the first requirement by opening the account under a title such as 'Title Company as Custodian' or 'Title Company Escrow

Account,'" Hencke notes. "The title company can satisfy the second requirement by maintaining its own records as to the interests of the parties (buyer, seller, lender)..." Readers can find the entire letter at: www.alta.org/images/pdf/08-09-04_FDIC_letter.pdf.

The second disclosure requirement (maintaining deposit records acceptable to the FDIC) may pose a considerable challenge for agents, because the FDIC has significant latitude in deciding what is deemed sufficient as a "deposit account record." The applicable regulations (12 C.F.R. § 330.1(e)) define "deposit account records" to include:

"Account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit-taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks."

4. Given the FDIC's wide discretion in interpreting its own rules and regulations, agents should build a paper trail that fully and

invested. It is important to note that some sweep vehicles may not have the protection of FDIC insurance.

What Happened in the Mid-Eighties?

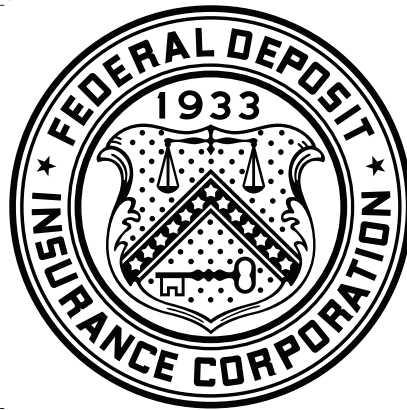
Starting with its inception in 1933 and for the next 50 years, the FDIC took in more in premiums than it paid to cover losses from bank failures. In 1983 that ratio reversed. Between 1980 and 1990 a total of 1,110 banks failed. Fortunately for most depositors, FDIC coverage was increased in 1980 from \$40,000 to \$100,000. During the S&L collapse of the late 80's, many depositors recovered their funds within days. Even so, a lot of hard-earned money not covered by FDIC was lost.

It is difficult to ascertain how many agents were sued or had to go to their errors and omissions carriers back then, but there was a case where a lawyer was found negligent for depositing escrow funds entrusted to him in a bank that later failed. Even though that case was overturned on appeal, it was a costly exercise for all involved.

The FDIC used two primary claims payment methods and presumably would use the same methods today:

- Payoff - the FDIC pays depositors directly for their insured funds.
- Purchase and Assumption - in which a healthy bank acquires the failed institution and assumes all of its deposits.

The FDIC prefers the latter approach, for obvious reasons. Regardless of the method the agency uses, title agents will need clear records that are consistent with FDIC regulations in order to avoid, or



at least limit, the hurdles they will otherwise face in recovering escrow funds. The time agents spend creating an appropriate paper trail today will reduce the time they spend standing in FDIC queues in the future.

What is The Liability of the Underwriter in These Situations?

While most believe that title insurance underwriters will not incur liability solely by reason of an agent's bank failure, there may be liability for trust account shortages in some states if the bank failure results in the agent being forced into a bankruptcy, receivership or conservation. The 2008 ALTA closing protection letters exclude: "loss or impairment of [the recipient's] funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent, Approved Attorney or Approved Closing Vendor to comply with [the recipient's] written closing instruction to deposit the funds in a bank which [the recipient] designated by name.

What Can Agents Do to Limit Their Liability?

As noted earlier, the best offense is a good defense. Agents need to make an informed choice of the banks in which they open escrow accounts and document their due diligence measures. At a minimum, they should remind clients about the aggregation issue and alert them to the risk that their deposits may exceed the FDIC insurance limit.

Agents should also consult with legal counsel on appropriate risk mitigation measures. That said, the "best practices" in our industry have long dictated that funds should be

New FDIC Rule Protects IOLTA Accounts

The Federal Deposit Insurance Corporation (FDIC) recently issued the Interim Final Rule on the Temporary Liquidity Guarantee Program (TLGP). The TLGP provides for unlimited federal insurance on noninterest bearing bank accounts as part of the government's efforts to normalize and encourage bank lending.

The initial draft exempted NOW accounts from the definition of noninterest bearing transaction accounts (IOLTA accounts are most often pooled NOW accounts). The American Bar Association, working with state and local bar associations, made a successful case for including IOLTAs in the TLGP. As a result, client funds deposited in IOLTAs are fully insured regardless of the amount.



held in accordance with an express written escrow agreement. Given current conditions in the financial markets and the economy, some underwriters have suggested that agents go a step further and expressly disclaim liability in their escrow agreement for the following:

- The financial status or insolvency of any other party, or any misrepresentation made by any other party.
- The legal effect, insufficiency, or undesirability of any instrument deposited with or delivered by or to the escrow agent or exchanged by the parties hereunder, whether or not the escrow agent prepared such instrument.
- The default, error, action, or omission of any other party to the escrow.
- Any loss or impairment of funds that have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a financial institution if such loss or impairment results from the failure, insolvency, or suspension of a financial institution, or any

loss or impairment of funds due to the invalidity of any draft, check document, or other negotiable instrument delivered to the escrow agent.

- The expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction accepted by the escrow agent has instructed the escrow agent to comply with said time limit.
- The escrow agent's compliance with any legal process, subpoena, writ, order, judgment, or decree of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside, or reversed.
- Any shortfall in the sufficiency of the amount held in escrow to accomplish the purpose of the escrow.
- Any obligation to collect additional funds, unless such obligation is in writing and signed by the escrow agent.

It also suggests that agents disclose the identity of the bank in which the escrow account will be held and have in place written escrow instructions from the parties to the transaction approving the escrow arrangement. This can be problematic in the title industry because standard real estate contracts often do not include this level of protective language. However, because the attorney/title agent is not usually a party to the initial contract and is not obligated to accept an escrow simply because a contract has been signed, agents might consider drafting a separate confirmatory escrow letter or agreement accepting the escrow subject to the terms and conditions and disclaimers similar to those suggested above.

By keeping trust accounts in banks that are financially sound, building a paper trail to attain and to preserve maximum FDIC coverage, and contractually limiting their liability, agents can help reduce their exposure and that of their clients and customers in the event of a bank failure.

(The information contained in this article is not legal advice and is not intended to be legal advice. It is recommended that readers consult an attorney for legal advice relevant to their individual circumstances. Agents should also consult their underwriters for more information.)



Joe Drum is senior vice president of corporate agency administration for the First American Title Insurance Company..

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eClosings: An Integral Part of Paperless Lending Strategies

Proficiency with eClosing systems helps closing agents provide better service to their lender clients while differentiating themselves from the competition.

BY KIM WEAVER

At the settlement table for a recent Flagstar Bank closing, the borrowers needed something changed on several of the loan documents. The closing package was swiftly redrawn so the borrowers didn't have to reschedule the closing. However, for the closing agent, it was even better because there was no need to print out the new documents. How? Through Flagstar's use of electronic closing software, the documents stayed in electronic format all the way through closing, and were executed via electronic signature.

After the closing, the closing agent didn't have to review the documents to make sure they were all properly executed because the eSigning process ensured they were signed correctly. There was no concern about making the courier drop-off time to return the documents because they

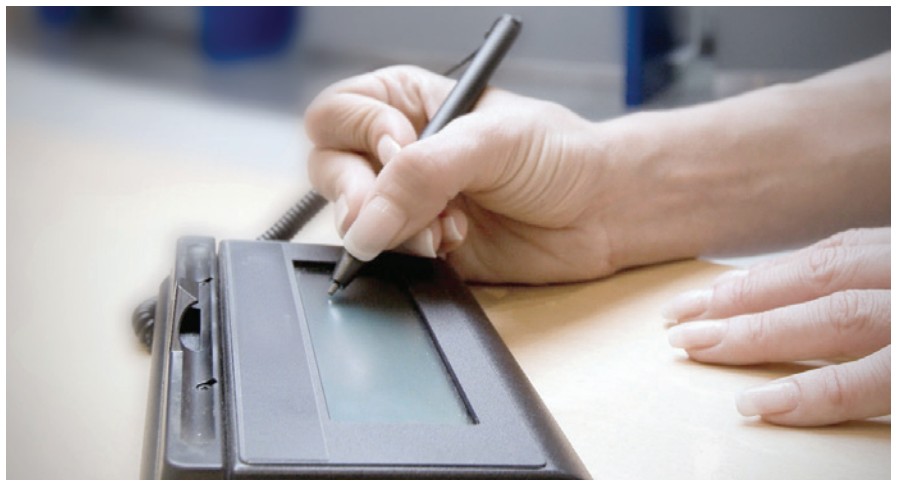
were instantly available to Flagstar as soon as they were signed.

"eClosings are an integral part of our paperless lending strategy," says Brian Boike, first vice president of lending support for Flagstar. "We've invested through the years in technology that makes the origination process easier and faster, and eClos-

ings benefit everyone involved. We receive the executed closing package back faster, we don't have to do manual post-closing review on it, and we can deliver the loan to the secondary market sooner."

It's been almost ten years since electronic signatures were made legal by ESIGN (Electronic Signatures in Global and National Commerce Act). Since then, whether by "click sign," "signature pad," or other method, adoption of electronic signatures has been growing. For the real estate industry the time and cost savings from electronic signatures have been a key driver in increasing efficiency for all parties in the closing process.

"Establishing the necessary framework of data and document standards for originating eMortgages has been a major achievement for the all-volunteer MISMO (Mortgage Industry Standards and Maintenance Organization) work groups," says Harry Gardner, vice president of industry



technology at the Mortgage Bankers Association. “Now, because of these standards, we’re seeing the number of electronically signed eNotes increase substantially every month as more and more lenders support this process.”

Even when the closing documents are signed electronically, the closing company representative still meets with borrowers and sellers in person to assist them with the process. Along with the actual electronic signing of the documents by the borrowers, sellers, and closing agent, this differentiates eClosings from another closing method also growing in popularity, the web-based closing. Web-based closings occur when documents are presented online to

the borrowers, but the documents are usually executed with ink signatures on paper, using a power of attorney granted to the closing company.

Most eClosings are similar to paper-based closings because the closing company representative also confirms the participants’ identity and witnesses the closing ceremony itself. The difference is mainly in learning the workflow of the eClosing system being used and how to navigate it confidently.

“Electronic closings offer closing agents an opportunity to completely differentiate themselves from the competition,” says Jason Nadeau, president of Stewart Lender Services. “The electronic closing reduces cost and time for the closing agent, offers

a significantly better service experience for the consumer, and helps agents grow their business. There are nothing but positive outcomes for everyone.”

There are several eClosing systems available today, and many closing agents have worked with more than one of them. Generally, lenders will specify the eClosing systems they would like the closing agent to use for the closing. Some eClosing systems may require equipment like signing pads; other systems do not. For security reasons, most eClosing systems require the closing company to set up an account with User IDs and passwords, whether they are closing coordinators or notary signing agents. It’s important to understand

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which eClosing systems your lender client is using and to attend training on how to use those systems so you feel comfortable with the workflow.

Most eClosing systems follow the same workflow. First, the closing documents are uploaded to the system by the lender, the closing company, or both. Then the closing

apply their electronic signature to the document. Most eClosing systems also offer the ability to print out certain documents for ink signature if needed. However, it is important to understand that some documents, such as the electronic note, must be signed electronically because of the specialized language they contain or

cal when the lender is ready to deliver the eSigned eNote to the secondary market because it enables investors to verify that the lender is the current owner of the asset.

Perhaps as part of the growing use of electronic documents in our daily lives, whether electronically signing receipts at the store, paying bills online, or even eSigning tax returns, consumers have embraced signing closing documents electronically. One signing agent reports, “The customers were very excited to be in on this new procedure.” The closing agent representative, of course, plays a key role in making the borrowers feel comfortable with the eClosing process.

Just as with various document delivery systems, the more eClosing systems that closing agents are comfortable with, the better service they can provide to lenders.

For an example of the eClosing process as one lender has implemented it, go to <https://paperless.flagstar.com/title> and click on the “Settlement Agent” link for the paperless closing icon.

Just as with various document delivery systems, the more eClosing systems that closing agents are comfortable with, the better service they can provide to lenders.

company representative meets with the borrowers and sellers in person. Just like a paper-based closing, the closing representative verifies the parties’ identities by photo IDs and any other required authentication, but also logs into the eClosing system to begin the process of reviewing the documents with the signers.

The next part in the process is usually a screen to confirm the parties’ willingness to review and sign the documents electronically, commonly called the ESIGN Consent. Lenders will have already asked their borrowers if they wish to close electronically, so this step is to retain a record of their consent, as well as the consent from the property sellers.

After the ESIGN Consent, the closing agent representative will review the documents with the signers. Depending on the eClosing system being used, the closing agent representative will explain how the document signers need to

they must be redrawn if the borrower changes his or her mind and decides to ink-sign them. This is why lenders try to avoid this scenario by obtaining the borrower’s eSign consent earlier in the process.

After each document is signed electronically by the applicable signers, the eClosing system will automatically apply a specialized type of electronic signature to each document, called a tamper-evident seal. This seal is unique to each document and can be later used to show there have been no changes to the document since it was signed.

Once the documents are signed, including the eNote, the eClosing system will also register the signed eNote with the MERS® eRegistry. The MERS® eRegistry is an integral part of an eClosing because it provides the lender with a way to prove that the eNote exists and that the lender is the legal owner of the electronic record. This becomes criti-



Kim Weaver is product manager for the Fiserv Lending Platform, which provides electronic document sharing with eSignature and eVaulting options for the mortgage industry. For questions or comments, please e-mail kim.weaver@fiserv.com.

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Member News

The **First American Corporation** announced the creation of two new business lines: Valuations and Property Solutions, and Outsourcing and Technology Solutions. The business lines are designed to deliver a full range of integrated services to improve operational efficiency.

Valuation and Property Solutions includes First American eAppraisalIT, one of the nation's leading appraisal management companies; First American Residential Value View, a leader in broker price opinions (BPOs); and First American Field Services, one of the nation's largest and most comprehensive providers of residential property inspections and preservation services.

Outsourcing and Technology Solutions includes First American's National Default Outsourcing, National Claims Outsourcing, Loss Mitigation Services, Default Technologies, Loan Production Solutions, REO Servicing, and Global Offshore Services.

Stewart eMortgage Technologies announced the successful integration between its SureClose® technology and Flagstar Bank's Loantrac System, providing Flagstar borrowers and Stewart Title's closing agencies with the ability to close Flagstar loans electronically.

Stewart's SureClose platform contains the eClosingRoom™ technology, which allows consumers to review and accept documents over the Internet. Closing agencies using the SureClose platform will be able to electronically receive loan-closing documents directly from Flagstar, electronically sign and notarize the documents with the borrowers, and automatically deliver

the eSigned documents from SureClose to Flagstar within minutes of the closing.

Wave Systems Corp. announced enhancements to its electronic signature and vaulting software that allow mortgage lenders to securely deliver, track, and sign disclosure documents electronically. Closing documents can be signed and notarized in a secure environment and the note then registered through MERS. Lenders can now require electronic initialing on key line items to protect them from borrowers claiming not to have understood their debt obligation.

iRise®, a leading visualization solutions company, announced that First American Title Insurance Company chose its collaborative software platform, which enables businesses to quickly visualize and "test market" applications before a single line of code is written.

Using iRise, business people can understand what they need and then communicate that knowledge to others using visual models that replicate the exact look, feel, and behavior of the final product, taking the guesswork out of application definition. Just as computer-aided design (CAD) tools transformed the automotive, aerospace and semiconductor industries, iRise is now transforming the global business application market.

New Members

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Samuel Bass
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 Mark Ellison
Georgia Title Services, Inc.
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 Shedee Strickland
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Thanks to ALTA and its Members for Their Contribution in the Making of the New RESPA Rule

A year and a half ago, President Bush promised to create new mortgage rules as part of a comprehensive plan to address rising foreclosures. Today, we have made good on that promise by moving forward with new regulations to help families avoid getting into trouble in the first place.

For the first time in more than 30 years, the U.S. Department of Housing and Urban Development issued long-anticipated mortgage reforms that will help consumers shop for the lowest cost mortgage and avoid costly and potentially harmful loan offers. This change came none too soon.

In the tragic wake of rising foreclosures and the economic fallout in communities all across this nation, there has been a clarion call for responsible regulation to correct some of the institutional problems that led us to where we are today. RESPA Reform is that responsible regulation.

As most of you know, RESPA reform has been a long time in the making. Beginning in July of 2002, HUD first proposed sweeping reforms that many in industry and in Congress found anti-competitive. After considerable public comment to that proposed rule, HUD withdrew the measure and embarked on a new rulemaking effort that sought to build on an overwhelming consensus that existing RESPA rules were not serving us terribly well.

Many of you may recall the RESPA roundtables discussions HUD hosted in 2005. There was substantial opposition to part of the 2002 proposal related to mortgage packaging. In the end, the prevailing wisdom was that HUD should focus its reform on improving the Good Faith Estimate to make the form more comparable to the HUD-1 Settlement Statement.

HUD listened. We took this rulemaking process very seriously. We listened to extensive comments by consumers, industry, and associations including ALTA. HUD proposed a new RESPA rule built on improving the GFE.

The final RESPA rule redesigns the GFE to provide borrowers information they can understand so they can shop more effectively for the best loan. Based on comments we received, the GFE was shortened to three pages including an instructional sheet. References to the GFE were added to the HUD-1 and an additional page was added to the Settlement Statement to allow consumers to easily compare their final closing costs and key loan terms with those listed on their Good Faith Estimates.

We believe that these changes will result in better mortgage products, lower interest rates, and lower settlement costs for borrowers. Perhaps more significantly, it will also help consumers avoid the very problems they've been experiencing recently.

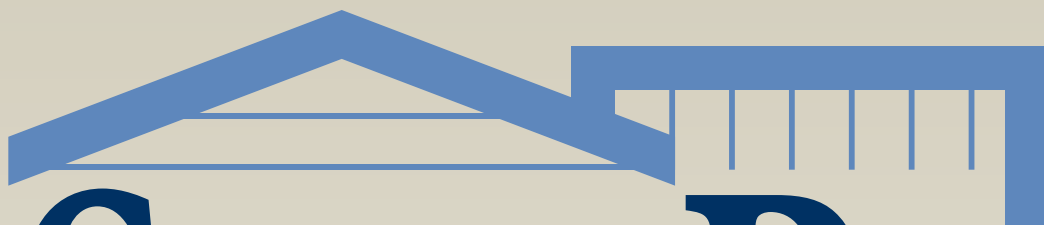
All along, HUD's focus has been, and will continue to be, providing families the information they need to make informed decisions about the largest purchase of their life. In the end, we believe we published a Rule that is balanced and provides consumers meaningful disclosures without adversely impacting those in the business of homeownership. We are greatly encouraged that ALTA has embraced this new Rule. We also recognize that change can be tough so we are requiring full implementation of the new forms on January 1, 2010, to provide industry the necessary time to build them into their businesses.

In closing, we want to thank ALTA and its members for their contribution in the making of this much needed Rule.

Gary M. Cunningham

Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing
Department of Housing and Urban Development





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HUD RESPA Panel

The new RESPA rule partially takes effect on January 16, 2009. Hear a panel of expert staff from HUD discuss the new rule, how to comply with its requirements, and answer your questions. With the biggest changes in over twenty years, you won't want to miss this opportunity to hear from the experts.

Capitol Hill Lobby Day Prep Briefing

ALTA staff will prepare you with everything you need to know before meeting with your Congressional Representatives. Learn what issues to focus on and what talking points to utilize in your meetings. Presentation materials will be distributed for your Hill visits. This briefing is designed to answer all of your questions to ensure a successful visit with your legislators.

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