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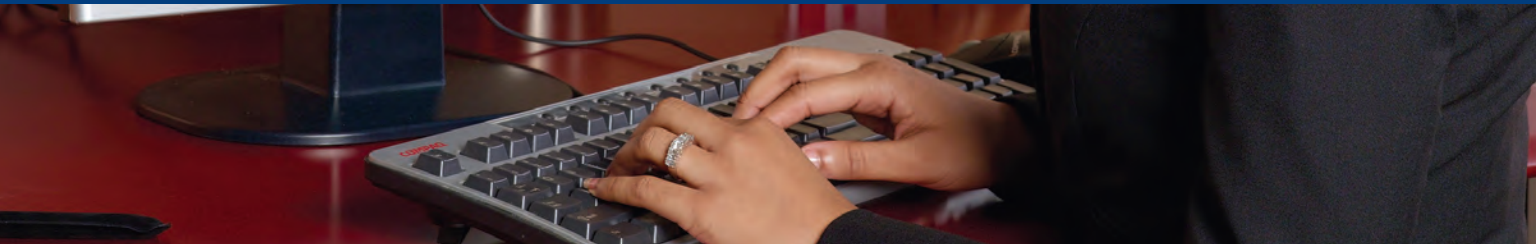


Solving the Creditors' Rights Quagmire

An Argument for the Nationwide Prohibition
of Creditors' Rights Coverage



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May 2-4	Business Strategies Conference St. Louis, MO
October 13-16	2010 Annual Convention San Diego, CA

STATE CONVENTIONS

April 15 - 18	Oklahoma
May 2	Iowa
May 6 - 10	New Mexico
May 23 - 25	California
June 2 - 6	Arkansas
June 4 - 6	Virginia
June 7 - 8	Wyoming
June 9 - 12	New Jersey
June 9 - 12	Pennsylvania
June 10 - 11	South Dakota
June 17 - 20	New England (CT, ME, MA, NH, RI, VT)
June 23 - 25	Texas
July 18 - 20	Michigan
July 22 - 23	Illinois
August 5 - 7	Northwest (ID, MT, OR, UT, WA)
August 12 - 14	Kansas
August 15 - 18	New York
August 19 - 21	Minnesota
September 9 - 12	Dixie Land (AL, GA, MS)
September 9 - 11	North Dakota
September 12 - 14	Ohio
September 15 - 16	Nebraska
September 15 - 17	Colorado
September 16 - 17	Missouri
September 16 - 18	North Carolina
September 16 - 18	Indiana
September 22 - 24	Maryland
November 3 - 5	Florida
December 1 - 2	Louisiana

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One Informed Policymaker at a Time

As the title industry continues its pursuit of educating policymakers on the value title insurance provides to the efficient transfer of property and the economic health of the United States, there was a significant announcement by the Texas attorney general that paid homage to the title industry.

In an announcement that a Southern Texas developer has been charged with defrauding first-time homebuyers by selling houses that were encumbered by undisclosed liens, Texas Attorney General Greg Abbott indicated homebuyers can protect their property rights by making sure a “title company is involved in the transaction and independently determines who owns the property and checks for liens or outstanding debts for which the buyer could be held liable.”

It's alleged that the builder, Casa Linda Homes, sold residential properties that were encumbered by delinquent property tax liens, third-party lender liens or mechanic's liens. The builder was able to carry out the alleged fraud, in part, because the houses were “owner financed” by Casa Linda Homes. As a result, purchasers were not warned about the undisclosed liens, because Casa Linda did not require homebuyers to purchase title insurance.

This is a perfect example of how an owner's title insurance policy could have protected the interests of the homebuyers. We applaud the Texas attorney general for recognizing the value title insurance provides to consumers and encourage policymakers across the country to engage with title professionals in their state to become educated on the preventive measures title agents take to eliminate claims and protect consumers. This is a message ALTA members must share with their state policymakers.

Spearheaded by ALTA President Mark Winter, ALTA has launched a Personalized Policymaker Education program to help change this dynamic and help policymakers learn about the important role you play in the mortgage transaction process.

ALTA members are encouraged to reach out to their U.S. Senator, U.S. Congressman, or state regulator to ask them to come to your office to learn what the industry does to protect the real estate transaction. These visits to your office should take about an hour and should include a 30 to 45 minute office tour and a five to 15 minute drop-in on a closing.

ALTA has created a soup-to-nuts outline on how to conduct the tour. All you have to do is schedule the appointment. Speaking of appointments, ALTA carried the industry's value proposition to Capitol Hill holding more than 160 meetings with Congress. Read more about the Federal Conference on page 22. I have to say, ALTA members represented the industry in grand fashion and piqued the interests of many legislators and their staff. We have the ear of decision makers. We are making a difference – even if it's educating one policymaker at a time.



A handwritten signature in blue ink, appearing to read "J. Yohe". The signature is stylized and fluid.

– Jeremy Yohe

Private Transfer Fees Hinder Transfer of Property, ALTA Board Concludes

The American Land Title Association Board of Governors recently voted to oppose a certain variation of a private transfer fee (PTF) covenant after spending the past several months studying the impact on the transfer of real estate.

ALTA's Board voted to oppose private transfer fee covenants in a February conference call and reinforced its position by adopting a policy in March. The Board noted private transfer fee covenants cost consumers money and will result in increased costs of underwriting, claims,

escrow services and compliance for the land title industry.

"ALTA opposes covenants that do not run with the land, unduly burden the property or unreasonably restrain the transferability of real property. Such covenants are not legitimate property rights because they do not benefit property owners," the policy states.

These covenants require a fee (usually 1 percent of the sale price) be paid to a developer or their trustee each time a property is sold for a set period of time

(usually 99 years). These are not like covenants where proceeds benefit homeowners' associations, environmental conservation efforts or charitable organizations that use revenues to benefit property owners.

Utah is on the verge of becoming the fourth state to ban the use of private transfer fee covenants, which require consumers to pay thousands of dollars to third parties that hold no ownership interest in the property for the right to buy or sell real estate. The bill, which awaits the governor's

signature, declares certain covenants, restrictions, agreements and other instruments and documents that obligate a future buyer or seller to make a payment upon the transfer of real property to be void and unenforceable. The bill does not impact private transfer fees already recorded.

Florida, Missouri and Kansas already prohibit these private transfer fees, while Texas and California limit the use. Ohio has a bill pending that would prohibit private transfer fees.

ALTA Announces 2011 Annual Convention Site

The American Land Title Association's Board of Governors approved Charleston, S.C., as the site of the 2011 Annual Convention. ALTA is in the process of negotiating a contract with Charleston Place, which offers a blend of 18th century style and 21st century comfort. Charleston Place is situated in the heart of Charleston, one of America's oldest cities.

For the sixteenth

consecutive year, readers of *Condé Nast Traveler* magazine honored Charleston as a Top 10 travel destination in the United States. Charleston was honored with a No. 2 slot – topped only by San Francisco.

Charleston offers horse-drawn carriage rides, mansions and museums, and nearby, historic monuments such as Fort Sumter, where the first

shots of the Civil War were fired. A few miles from the city are a number of magnificent old plantation houses, such as the 18th century Middleton Place.

Charleston offers famous golf courses designed by Jack Nicklaus and Tom Fazio, top-rated tennis courts, pristine beaches, monumental battleships and beautifully preserved architecture. The city's mild climate allows visitors to enjoy most of the

sights year-round. Many visit Charleston for its fabulous food. The city claims to have the "best grits you'll ever have, prepared in ways you never imagined." Visitors can also enjoy festive dockside oyster roasts, high-end restaurants and outdoor cafes.



Update to RESPA Rule Instructional CD Available

ALTA's RESPA Implementation Taskforce, in conjunction with ALTA's Land Title Institute, has completed an update to its instructional CD, "Closing Real Estate Transactions in 2010: The New RESPA Rule, GFE, and HUD-1." The CD includes line-by-line instructions

on the forms, as well as a companion guide. Those who purchased the original CD will receive the update for free. Otherwise, the CD costs \$99 for members and \$149 for non-members. Contact Kevin Russell at krussell@alta.org or order online at www.alta.org.

Technology Committee Announces Call for Papers

Do you have a white paper, best-practices guide or how-to on a subject of importance to title professionals and small-to-medium size business owners? The ALTA Technology Committee is looking for a few good papers to publicize for the benefit of your fellow ALTA members.

- What is it (basic definition of the product, service, or concept)?
- How does it work?
- Do I need an IT person to set this up or can I do it myself?
- Why do I need it?
- How does it help me?
- How does the investment pay off?

If you have a paper and would like to share your expertise, forward your paper to the committee's staff liaison, Kelly Romeo, at kromeo@alta.org.

STRUCTURE AND CONTENT GUIDELINES:

Submissions should strive to provide easily identifiable sections of information/advice for owners/managers (Executive Summary) and information/advice for IT specialists. The paper should also strive to answer the following questions:



ALTA Offers New Member Benefit Program

The American Land Title Association has launched its latest member benefit program, The Member Conferencing Program from InterCall.

As the world's largest conferencing services provider, InterCall can help businesses save time and money with world class conferencing solutions from simple Audio-conferencing to cutting edge Web-conferencing platforms such as WebEx and

Microsoft Live Meeting.

You will receive exclusive member pricing on both audio and web conferencing with rates as low as \$.05 per minute on toll free audio-conferencing. There are no contracts to sign or minimum spending requirements, so sign up today. Call the Member Conferencing center at 1-800-514-2818 from 8 a.m. to 8 p.m. EST, or visit www.alta.org to enroll.

ALTA Urges Avoidance of 'One Size Fits All' Reform to Securitized Credit Markets for Commercial Real Estate

The American Land Title Association joined 12 other trade associations, including the National Association of Realtors, in submitting a letter to Sens. Chris Dodd and Richard Shelby asking the U.S. Senate Committee on Banking to consider the enormous challenges facing commercial real estate and the uniqueness of the markets that finance the \$6 trillion sector when exploring financial regulatory reform proposals.

"The inability to secure financing could easily result in increased loan

defaults, or the forced sale of properties at greatly depressed prices, creating a ripple effect of financial losses and more job layoffs," the letter said.

The entire letter can be found at www.alta.org.



Solving the Creditors' Rights Quagmire

An argument for the nationwide
prohibition of creditors' rights
coverage.

A decade ago, title insurance underwriters might have agreed on what constitutes a reasonable creditor's rights underwriting risk. That is not the case today. The recent sharp rise in fraudulent conveyance actions brought by unsecured creditors has exposed the uncertainty and risks inherent in creditors' rights coverage.

Previously, title insurers comfortably underwrote creditors' rights coverage, a form of title insurance that protects lenders from the invalidation of liens under federal or state fraudulent conveyance actions. During the heady days when credit was plentiful, and the real estate market was rosy, creditors' rights coverage was all but a condition of closing for commercial lenders. >>

by Roger Howard, Esq.



But in 2007 when the real estate market crashed, multi-million dollar loan deals collapsed. Lenders whose secured-loan collateral was now vulnerable to impairment under fraudulent conveyance laws immediately sought refuge under the coverage of creditors' rights protection provided by title insurers.

When major creditors' rights claims began to appear, title insurers took notice. But it wasn't until 2010, in the wake of the Touse decision — and after the claims arising from the leveraged deals of 2007 had run their course — that the title insurance industry took action.

Recent Developments

The title insurance industry has taken the following action regarding creditors' rights:

1. Prior to 2010, four states had entirely eradicated creditors' rights coverage from their underwriting: Florida, New York, New Mexico and Texas.
2. Effective February 1, 2010, Pennsylvania revoked ALTA Endorsement No. 21, which was the affirmative ALTA endorsement for creditors' rights coverage. New Jersey, Delaware and Oregon quickly followed suit.
3. On February 4, 2010, the California Land Title Association voted to decertify CLTA Endorsements No. 131 and 131-06, its counterparts to the ALTA creditors' rights endorsements.
4. In the second week of February, 2010, First American Title Company and the entire Fidelity Group — including Chicago Title, Fidelity, Tigor, Lawyers Title and Commonwealth — announced that creditors' rights coverage is no longer available
5. Effective March 8, 2010, ALTA voted to withdraw/decertify ALTA Endorsement No. 21. But even if Endorsement

No. 21 is no longer available, title insurers that have not revoked creditors' rights coverage can still underwrite creditors' rights by drafting their own affirmative endorsements — unless regulators implement statewide prohibition of creditors rights coverage (as in Florida, New York, New Mexico and Texas).

implementing statewide prohibitions to effect a nationwide ban on creditors' rights coverage.

Overview of Creditors' Rights Coverage

Creditors' rights coverage provides the purchaser of real property or

It is time for regulators to solve the creditors' rights quagmire once and for all by implementing statewide prohibitions to effect a nationwide ban on creditors' rights coverage.

Clearly, title insurers intend to stop issuing creditors' rights coverage. In repealing creditors' rights coverage, Fidelity and First American exhibited bold leadership in the title insurance marketplace — but there is no guarantee how long the prohibition will last, or if the rest of the industry will follow. Absent clear guidance from state regulators, the title insurance marketplace will remain uneven — and worst of all, uncertain.

Will the revocation of creditors' rights coverage become an industry-wide standard? And if so, for how long? Can the industry self-regulate creditors' rights coverage?

The simple answer is “no.” Title insurers are businesses and may succumb to market pressures when major clients make demands. State regulators can and should ensure that the leadership taken by the two largest title companies becomes a permanent, industry-wide standard. It is time for regulators to solve the creditors' rights quagmire once and for all by

its lender with insurance that the transaction will not be unwound or set aside by a creditor on the basis of the transaction constituting a fraudulent conveyance under federal bankruptcy laws. Under federal bankruptcy law, a conveyance is constructively fraudulent if it meets the following tests. First, the conveyance must: (i) be made while the grantor is insolvent, (ii) make the grantor insolvent, or (iii) leave the grantor with unreasonably small capital to continue its business. Second, the insolvent or undercapitalized grantor must have received less than reasonably equivalent value for its conveyance.

If a lender purchases a loan policy of title insurance including creditors' rights coverage, the lender is entitled to indemnity from its title insurer for loss suffered if the lender's security interest in the real property is invalidated. Frequently, that loss is the value of the property that could have been foreclosed on, if the lien had not been invalidated.

Lenders typically request creditors' rights protection as protection from post-closing challenges to title, or to the validity, enforceability or priority of an insured lien. If a loan secured by real property is deemed by a court to be a fraudulent conveyance and the lien is invalidated, then the insured lender loses its security interest in the real property collateral. If the lender obtained creditors' rights coverage under its policy of title insurance, the lender may tender a claim to its title insurer for the loss that the insured suffered due to the potential invalidation of the lien.

Endorsement No. 21

Prior to 1990, lenders' title policies were silent regarding coverage for claims arising under creditors' rights laws. At that time, the most common ALTA title policy form was known as the 1970 policy. Beginning in 1990, ALTA adopted language expressly excluding creditors' rights coverage from its form policies. ALTA added the creditors' rights exclusion to the form policy because title insurers did not consider creditors' rights coverage to be title insurance. Lenders, however, were concerned that the 1990 creditors' rights exclusion would allow the insurer to deny coverage for any avoidance claim — even where the basis of the claim was solely the failure of the title insurer to record documents properly. In 1992, ALTA responded by adopting an amended creditors' rights exclusion, clarifying that coverage could not be denied for certain recording defects.

Over time, and in response to market pressure, many title insurers "endorsed over" the 1992 creditors' rights exclusion to satisfy the demands of insistent lenders. ALTA standardized this approach in 2004

ALTA Board Approves Changes to Several Policy Forms

In meeting market demands and changes, the ALTA Board of Governors approved recommendations to revise seven existing forms, adopt four new forms and decertify one form during a meeting on Feb. 3. A 30-day comment period ended March 8.

The following forms are impacted by the Board actions:

Decertified Form:

ALTA Endorsement 21-06

Creditors Rights: The existing ALTA Endorsement Form 21-06 (Creditors' Rights) is designed for issuance with an Owner's Policy or Loan Policy when insuring with respect to voidability of an estate or interest or the lien of the Insured Mortgage because of the occurrence on or before Date of Policy of a fraudulent transfer or a preference under federal bankruptcy, state insolvency, or similar creditors' rights laws, subject to the terms and provisions of the endorsement and subject to the Exclusions from Coverage and other terms of the policy. Revision

or decertification and withdrawal of the Form was discussed with benefit of outside antitrust counsel. The ALTA Forms Committee was unable to arrive at agreement on the applicable terms and concluded that developing a new or revised standard ALTA form is not achievable or in the industry's best interest, due to a lack of unanimity among industry participants about the ongoing need for and terms of a standardized industry endorsement. Decertification of the form will not affect the ability of each title insurer to separately decide what coverage or endorsement, if any, it will be willing to provide.

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by adopting Endorsement No. 21, affirmatively providing creditors' rights coverage for commercial transactions. Endorsement No. 21 specifically insures against loss or damage resulting from a fraudulent transfer. Nevertheless, four states — New York, Texas, Florida and New Mexico — did not adopt Endorsement No. 21 because they determined that creditors' rights coverage poses an unacceptable risk to title insurers. These states only allow policies to be issued with creditors' rights exclusions; they do not permit Endorsement No. 21 (or any other endorsement) to remove those exclusions.

In early 2010, ALTA voted to withdraw Endorsement No. 21, but left open the possibility that title insurers could once again "endorse over" the creditors rights exclusion using their own endorsement. Shortly thereafter, the states of New Jersey, Pennsylvania, Delaware and Oregon moved to withdraw Endorsement No. 21. Regardless of whether Endorsement No. 21 or similar creditors' rights endorsements are available, title insurance companies still have the legal option to issue creditors' rights coverage by drafting their own affirmative creditors' rights endorsement — unless they are in a

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state expressly prohibiting any and all forms of creditors' rights.

Title Insurers Should Not Underwrite Creditors' Rights Coverage

Lenders Hold All the Cards

Title companies cannot match the teams of experts assembled by lenders. Lenders' diligence teams include accountants, solvency experts (who would typically provide a solvency opinion), investment bankers and lawyers. These experts possess extensive knowledge and sophistication regarding financial analysis, and they have access to all of the lenders' files — including files from other experts engaged by the lender. Additionally, the experts engaged by lending institutions receive very large fees and perform comprehensive financial analysis. Notably, more and more of the lenders' outside teams of experts refuse to provide written opinions regarding creditors' rights claims. Additionally, these experts include liability limits in their retention agreements and limit the content of their opinions to such an extent that the lenders seek additional indemnity from title insurers. Thus the true creditors' rights experts — the lenders and their diligence teams — have succeeded in shifting the underwriting risk to title insurance companies that are left to assess the viability of these transactions and opine on creditors' rights issues.

Lenders Don't Provide Time for Proper Underwriting

In addition to lacking the expertise and financial resources of the lenders and their diligence teams, title insurers are also severely disadvantaged by

the lack of time in which they must conduct their review. Repeatedly, lenders request creditors' rights coverage shortly before a closing deadline, many months after the lender's team of professionals vetted the solvency issues. Further, the prediction of the solvency of the grantor after a transaction requires the title insurance company to analyze the future of the borrower's business as well as the future of the external economy. By that stage, the lender's solvency experts have already spent months conducting such analysis, so the title insurer's financial analysis is duplicative.

Title Companies Lack Access to Critical Data

To underwrite creditors' rights coverage properly, the title insurer must conduct rigorous due diligence with respect to both the borrower and the transaction. The title insurer must determine whether the grantor received reasonably equivalent value for the transfer, was solvent at the time of the transfer, will remain solvent despite the transfer and will have sufficient capital to carry on its business.

When the grantor is a public company, title companies are further handicapped by SEC disclosure requirements that prevent title insurers from receiving material nonpublic information, while the lenders and their analysts do receive it. Lenders receive recent nonpublic financial results, which are absolutely essential to a meaningful analysis of the solvency of the grantor. Title insurance companies have less time to digest the data they receive, as well as less bargaining power to receive the most vital information available.

Additionally, making a determination of solvency requires

knowledge of the fair market value of the transferor's assets, but that information is difficult or impossible for title insurers to obtain. GAAP financial statements report book value for each asset and not fair market value. A title insurance company thus needs an independent appraisal of the market value of the transferor's assets, and must also assess the potential effect a bankruptcy could have on those assets. Further, the recent Touse case demonstrates that even apparently qualified appraisers and experts can disagree and that a bankruptcy judge may make his or her own independent determination of solvency. If solvency experts cannot agree on a proper analysis, then it is extremely difficult, if not impossible, for title insurance companies to make accurate assessments of a transferor's solvency.

Insufficient Fees to Cover the Risk

A title company must incur diligence costs at the underwriting stage, and is in turn exposed to massive legal defense costs whether or not the insured suffers a loss. The cost of defending a creditors' rights claim is often millions of dollars, even if the lender insured ultimately prevails on the merits. Understanding the underwriting and defense costs of offering creditors' rights coverage, title insurance companies should increase premiums substantially from current market rates. But title insurance premiums are often state-regulated, and in some states, title insurance companies are prohibited from charging a material premium for providing creditors' rights coverage. In general, there is only a nominal charge for title insurers to underwrite creditors' rights. As a result, title insurance companies are not compensated for either the expensive underwriting or

ALTA Board Approves Changes to Several Policy Forms

Revised Forms:

ALTA Endorsement 4-06 Condominium: The existing ALTA Endorsement Form 4-06 (Condominium) is designed for issuance with an Owner's or Loan Policy insuring title to a condominium unit. Paragraph 4 has been modified to clarify that the endorsement insures priority of the lien of the Insured Mortgage over any lien for charges and assessments provided for in the existing condominium statutes and condominium documents.

ALTA Endorsement 5-06 Planned Unit

Development: The existing ALTA Endorsement Form 5-06 (Planned Unit Development) is designed for issuance with an Owner's or Loan Policy insuring title to a lot or tract in a planned unit development. Paragraph 2 has been modified to clarify that the endorsement insures priority of the lien of the Insured Mortgage over any lien for charges and assessments in favor of any association of homeowners that are provided for any existing document at Date of Policy.

ALTA Endorsement 10-06 Assignment: The existing ALTA Endorsement Form 10-06 (Assignment) is designed for issuance when the lien of the Insured Mortgage is assigned. The Form has been modified to clarify the endorsement by addition of the defined term "Assignee" and by addition of a creditors' rights exception that is consistent with the creditors' rights exclusion in the ALTA Loan Policy.

ALTA Endorsement 10.1-06 Assignment And Date

Down: The existing ALTA Endorsement Form 10.1-06 (Assignment and Date Down) is designed for issuance when the lien of the Insured Mortgage is assigned. The Form has been modified to clarify the endorsement by addition of the defined term "Assignee" and by addition of a creditors' rights exception that is consistent with the creditors' rights exclusion in the ALTA Loan Policy.

ALTA Endorsement 28-06 Easement - Damage or Enforced Removal: The existing ALTA Endorsement Form 28-06 (Easement - Damage or Enforced Removal) is designed for issuance when an existing building encroaches into or over an easement excepted in Schedule B of the Owner's or Loan Policy. The Form has been modified in the introductory paragraph of the endorsement to clarify that it provides insurance with respect to exercise of the easement in accordance with its terms that results in damage to an existing building located on the Land or that results in enforced removal or alteration of that building.

ALTA Expanded Coverage Residential Loan Policy:

The existing ALTA Expanded Coverage Residential Loan Policy is designed for issuance when insuring the lien of the Insured Mortgage encumbering title to an improved one-to-four family residence. The Policy has been modified to include a creditors' rights exclusion in order to be consistent with the existing Covered Risk that provides insurance only with respect to certain issues arising out of prior transactions and to be consistent with the ALTA Loan Policy.

ALTA Homeowner's Policy: The existing ALTA Homeowner's Policy of Title Insurance is designed for issuance when insuring title to an improved one-to-four family residence and when the Insured is a Natural person. The Policy has been modified (1) to include a creditors' rights exclusion in order to be consistent with the existing Covered Risk that provides insurance only with respect to certain issues arising out of prior transactions and to be consistent with the ALTA Owner's Policy, and (2) to expand the Continuation of Coverage in Section 2 of the Conditions, by also insuring an Estate Planning Entity (as newly defined) to whom the Insured transfers Title and by insuring anyone who receives Title by a transfer effective on the death of the Insured, as authorized by law.

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for their assumption of significant additional risk of loss and defense costs.

Creditors' Rights Coverage is Credit Insurance

Title insurance differs from other types of insurance, such as credit, property, or casualty insurance, because it is based upon a prior search of land title records and a review of recorded documents regarding a specific property. The coverage typically provided by title insurance companies pertains to title defects, liens and other encumbrances. In contrast, creditors' rights coverage is not underwritten by an examination of title, and the determination of insurability cannot be based on the results of a title search. Creditors' rights coverage is not title insurance; it is credit insurance because creditors' rights claims are a financial risk rather than a title risk. The New York Insurance Department recognized this fact when it issued an opinion in support of a statewide creditors' rights exclusion, because the risks associated with creditors' rights coverage are outside the purpose and scope of title insurance.

Violation of Monoline Restrictions

Because creditors' rights coverage is credit insurance and not title insurance, title insurers should be prohibited from underwriting creditors' rights because many states expressly impose restrictions — known as monoline restrictions — on title insurance companies to prohibit them from issuing any other kind of insurance. For example, California Insurance Code § 12360 provides: “An insurer which anywhere in the United States transacts any class of insurance other than title insurance

is not eligible for the issuance of a certificate of authority to transact title insurance in this State, nor for the renewal thereof.” These monoline requirements have been imposed to protect the title insurance industry; legislators wanted to ensure that the title insurance industry could not be contaminated by the much higher risks of other insurance lines. Non-title underwriting — specifically, creditors' rights coverage — should be universally prohibited, so that underwriting practices are congruent with state monoline restrictions.

Unpredictability

The risks of offering creditors' rights coverage cannot be assessed accurately. The recent Tousa ruling demonstrates

The New York Insurance Department recognized the risks associated with creditors' rights coverage are outside the purpose and scope of title insurance.

that fraudulent conveyance claims are extremely unpredictable. In October 2009, the bankruptcy judge in Tousa held that when subsidiaries granted liens in connection with borrowings that were for the benefit of their parent company, there was no reasonably equivalent value. Further, the judge rejected the debtor's own financial statements (including prior audits), appraisals of nationally recognized companies and a solvency opinion from an established firm, and concluded that the debtor was insolvent before and after the financing transaction.

The Last Word

Look for more discussion on creditors' rights coverage as John Hollenbeck, ALTA's treasurer, offers another perspective in The Last Word on page 30.

Thus, the judge discounted months of financial analysis by teams of experts, and invalidated liens totaling \$500 million. There have been many professionals speaking about the Tousa decision, but the lesson learned by the title insurers is that they cannot predict what a Bankruptcy Judge with 20/20 hindsight will hold when presented with a fraudulent conveyance claim. Such

an unpredictable risk of a potentially large exposure is inappropriate for title insurers.

Conclusion

As larger title insurers absorb smaller ones, a risk that once was spread across a group of title companies is now shared by only three or four title insurers. In multi-million dollar transactions, there is simply too much risk to concentrate among relatively few insurers. The most efficient solution to the creditors' rights coverage issues is for title insurance

ALTA Board Approves Changes to Several Policy Forms

Adopted Forms:

ALTA Endorsement 29-06 Interest Rate Swap

Endorsement - Direct Obligation: The new ALTA Endorsement Form 29-06 (Interest Rate Swap Endorsement - Direct Obligation) is designed for issuance when insuring the lien of the Insured Mortgage that secures a Swap Obligation. A Swap Obligation is defined as a monetary obligation under the interest rate exchange agreement and is often evidenced by a master agreement and confirmation(s). The endorsement is designed so that it may be issued on or after Date of Policy as the Swap Obligations and applicable agreements are executed. The endorsement does not insure with respect to rights or obligations set, created, or confirmed after the Date of Endorsement. The new Form will benefit industry participants and customers by providing a standardized endorsement that insures against loss by reason of the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for the Swap Obligation at Date of Endorsement.

ALTA Endorsement 29.1-06 Interest Rate Swap

Endorsement - Additional Interest: The new ALTA Endorsement Form 29.1-06 (Interest Rate Swap Endorsement - Additional Interest) is designed for issuance when insuring the lien of the Insured Mortgage that secures a Swap Obligation that is considered Additional Interest.

ALTA Single Transaction Indemnity Letter: Use of a single transaction indemnity letter can facilitate and speed the closing of the new transaction and provide a predictable form that can be requested by a subsequent title insurer. This indemnity could be used in commercial or residential transactions that are not already covered by a Model Inter-Underwriter Indemnification Agreement or by a similar mutual indemnity agreement, and could also be used in transactions to replace the Model or other mutual indemnity. The new form is designed for issuance if a second title insurer is called upon to insure against a specific defect, lien, encumbrance, or other matter based upon an indemnity from a prior title insurer whose policy insured against the matter. There is a need for the new ALTA Single Transaction Indemnity Letter to provide a standardized and predictable Indemnity Letter. The new form will benefit industry participants and customers by standardized form of indemnity that can be promptly produced.

ALTA Single Transaction Indemnity With Performance

Letter: This new form differs from the ALTA Single Transaction Indemnity Letter because it provides that the indemnitor additionally agrees to undertake reasonable efforts to eliminate the Indemnified Matter within a reasonable time.

regulators nationwide to ban the issuance of creditors' rights coverage.

In 2010, real estate values remain depressed and many companies are in bankruptcy. With the benefit of hindsight to reflect upon the rise and fall of the real estate market, now is the time to revisit the issue of creditors' rights coverage. In today's market, prudence dictates that underwriters must be conservative and meticulous; title insurers cannot afford to be cavalier in underwriting creditors' rights coverage — the risks are just too high.

Therefore, in the states that still permit title insurance companies to provide creditors' rights protection, it is urgent for state regulatory authorities and the Department of Insurance to act swiftly to prohibit this type of coverage.

The industry cannot rely on title insurers, who face significant competitive market pressures, to self-regulate the abolition of creditors' rights. When the global real estate economy recovers from the current recession, market pressures will compel title insurance companies to resume issuance of creditors' rights

coverage. Because title insurance is a vital component of a healthy real estate market, regulators must intervene. A nationwide prohibition of creditors' rights coverage would rescue the title industry from the creditors' rights quagmire.



Roger Howard leads the Real Estate Transactions group at the Los Angeles law firm Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLP.

Howard has been practicing real estate and business law for more than 35 years and is a recognized expert on title insurance.

Q4 2009 Negative Equity For Top 15 CBSAs*

CBSA Name	Properties With a Mortgage Outstanding Mortgages	Negative Equity Mortgages	Near** Negative Equity Mortgages	Negative Equity Share	Near** Negative Equity Share
Los Angeles-Long Beach-Glendale CA	1,551,801	419,437	58,580	27.0%	3.8%
Chicago-Joliet-Naperville IL	1,541,578	373,483	82,191	24.2%	5.3%
Atlanta-Sandy Springs-Marietta GA	1,236,393	385,068	100,004	31.1%	8.1%
New York-White Plains-Wayne NY-NJ	1,122,019	116,721	34,170	10.4%	3.0%
Washington-Arlington-Alexandria DC-VA-MD-WV	991,545	311,699	49,732	31.4%	5.0%
Phoenix-Mesa-Glendale AZ	978,242	564,764	37,423	57.7%	3.8%
Houston-Sugar Land-Baytown TX	931,105	116,263	56,789	12.5%	6.1%
Philadelphia PA	901,881	69,350	32,150	7.7%	3.6%
Riverside-San Bernardino-Ontario CA	870,134	477,648	33,350	54.9%	3.8%
Dallas-Plano-Irving TX	742,941	112,038	58,262	15.1%	7.8%
Tampa-St. Petersburg-Clearwater FL	686,827	332,968	28,182	48.5%	4.1%
Baltimore-Towson MD	637,796	105,713	31,675	16.6%	5.0%
Seattle-Bellevue-Everett WA	637,017	95,959	32,914	15.1%	5.2%
Denver-Aurora-Broomfield CO	635,902	149,353	51,927	23.5%	8.2%
San Diego-Carlsbad-San Marcos CA	598,717	196,747	25,789	32.9%	4.3%

*Ranked by number of active mortgages. This data only includes properties with a mortgage. Non-mortgaged properties are by definition not included. Only markets with 50,000 or more loans are included.

** Defined as properties in negative equity or within 5% of being in a negative equity position. Source: First American CoreLogic

Nearly 25 Percent of All Active Mortgages Underwater

First American CoreLogic reported that more than 11.3 million, or 24 percent, of all residential properties with mortgages, were in negative equity at the end of the fourth quarter of 2009, up from 10.7 million and 23 percent at the end of the third quarter of 2009. An additional 2.3 million mortgages were approaching negative equity at the end of last year, meaning they had less than five percent equity. Together, negative equity and near-negative equity mortgages accounted for nearly 29

percent of all residential properties with a mortgage nationwide.

Data Highlights:

- Negative equity continues to be concentrated in five states: Nevada, which had the highest percentage negative equity with 70 percent of all of its mortgaged properties underwater, followed by Arizona (51 percent), Florida (48 percent), Michigan (39 percent) and California (35 percent). Among the top five states, the average negative equity share was 42 percent, compared to 15 percent for the remaining 45 states. In numerical

terms, California (2.4 million) and Florida (2.2 million) had the largest number of negative equity mortgages accounting for 4.6 million, or 41 percent, of all negative equity loans.

- The net increase in the number of negative equity borrowers in Q4 2009 was 620,000, with the largest percentage increases occurring in Nevada, Georgia and Arizona. Among the states with the highest negative equity shares, California had the smallest increase in the negative equity share, which only rose 0.4 percent to 35.1 percent. In numerical terms, Florida had the largest increase in the number of negative equity borrowers rising by more than 141,000, followed by Georgia (65,000) and Illinois (55,000).

Ohio Land Title Association

President: Amy Kaspar

Title: CEO/President

Company: Kasparnet, Inc.

Industry experience: 35 years

Education: Bowling Green State University



What facet of your job do you find the most rewarding and why?

I find it rewarding to be truly living the American dream as the granddaughter of immigrants. I started with a briefcase and an idea. I grew my business to the point where I was able to sell it to a publically held company. I find it most rewarding to provide my employees with good jobs and be able to give back to an industry – both on the state and national level – that has given me so much.

If you could have dinner with one person in history, who would it be and why?

I would like to have dinner with the Dalai Lama. I am a totally fascinated with his vision, wisdom and tenacity.

What's your favorite book or movie, and why?

"The Wind in the Willows" by Kenneth Grahame because it reminds me of my childhood.

If you weren't in the title industry, what would you be doing?

Event planning.

Tell us about one thing that people in the industry would never guess about you?

I wear old, worn-out clothes when I am at home.

Industry Issues:

What are the major issues impacting the industry in your state?

In addition to the down housing market which is affecting the industry across the country, OLTA has twice in the past year faced challenges from the Ohio Legal Assistance Foundation (OLAF), which receives a portion of its funding from the interest on title agent IOTA accounts. OLAF twice tried to gain additional authority and revenue from these accounts. OLTA Past President Kevin Eichner testified on behalf of the Association regarding

this issue. OLTA was successful in thwarting these challenges both times by demonstrating the detrimental financial effect it would have on consumers purchasing homes.

Has any recent legislation been enacted in your state impacting the industry? Are there any pending bills that loom on the horizon, and what impact could it have?

Recently, Senate Bill 124 was signed by Gov. Strickland. This law changed the transfer on death deed to an affidavit and also clarified language in the statute regarding the standardization of recorded documents. OLTA worked closely with the Recorders Association to develop mutually agreeable language. Currently, House Bill 292 would outlaw transfer fee covenants which have been pervasive in other states. It passed the Ohio House in December and is currently being debated in the Senate.

What advice do you have for agents looking to compete in the new market?

It is critical in the current business environment that agents look at their complete operation and structure themselves to make every dollar count. Doing business the old way does not work anymore. Agents need to reach out and network with their fellow agents to stay relevant and discover new opportunities.



OHIO LAND TITLE ASSOCIATION

How many members does the state LTA have? Has membership held steady the past few years? What are you doing to grow membership and keep members engaged?

OLTA has nearly 900 members across the state. Membership has declined the past two years, coinciding with the decline in the real estate market and consolidation of underwriting companies. We have a

core group of members dedicated to strengthening Ohio's title industry. Membership renewals this year are arriving in the office at a rate of 10 percent higher than the same period last year. OLTA keeps members engaged through our strong advocacy efforts in the state legislative and regulatory arenas and by presenting education to address the challenges they face every day in their offices.

How do you see RESPA reform and the new GFE/HUD-1 forms impacting the industry?

Everyone is still working through the implementation and the title industry was more prepared for the changes than the others involved in real estate transactions. OLTA presented two

RESPA seminars in December. We were hoping for 100 attendees at each program and ended up with more than 250 at each. We planned two RESPA workshops in March and already we've had more than 140 register.

Profile Your State Leader

ALTA is profiling the president of state land title associations. If you would like to have your state association included, contact Jeremy Yohe at jyohe@alta.org.

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2010 Federal Conference and Lobby Day Roundup

More than 175 title insurance professionals attended the largest ALTA Federal Conference and Lobby Day.

The Federal Conference allowed attendees to meet with congressional leaders and discuss the importance of the industry, sharing how federal decisions impact the future of your business. The future of the mortgage market, RESPA reform and a potential agent data call were all hot topic discussions.

ALTA President Mark Winter said the Federal Conference may perhaps be the most important set of meetings that ALTA holds each year. Attendees made a time and effort commitment because they understand the importance of advocacy for the title insurance industry, he added.

“There was a constant theme that we heard during the conference, and it’s the need for trust. Trust is required to rebuild the real estate community,” Winter said. “What we heard from HUD and NAIC officials is that regulators are turning to our industry for answers. We have come a long way and are showing leadership. We should all be proud of our efforts.”

During his presentation, Federal Housing Administration Commissioner David Stevens agreed that trust must be re-established in the mortgage community. Stevens paid homage to the difficult task settlement agents have in the complex world of real estate finance.

“You are the only people that really know what’s in the documents,” he said. “Nobody else is there to explain it, so the settlement agent is there to explain it all. When it comes to understanding the GFE, people are expecting the title industry to be the experts.

“It’s a very unique time, because you are the ones who are the communicating vehicles for the entire industry. To protect the legal rights of all participants involved, it’s a complex role the title insurance industry plays.”

HUD Applauds Title Industry Efforts

Officials with the U.S. Department of Housing and Urban Development (HUD) addressed nearly 175 title

insurance professionals who packed in for the general session seeking answers to issues surrounding the new GFE/ HUD-1 forms.

Ivy Jackson, director of the office of RESPA; Barton Shapiro, deputy director, of RESPA Interstate Land Sales; and Laura Gipe, compliance specialist; participated on a panel moderated by Dan Wold, chairman of ALTA’s RESPA Implementation Taskforce.

The HUD officials complimented ALTA and its taskforce for proactively working with the department and other stakeholders in finding solutions and providing education to the new rule.

“It’s been a pleasure to work with the group,” Jackson said. “Instead of putting your head in the sand or going to the Hill and hoping that the rule might be stopped, the title insurance industry has been at the forefront of this.”

Wold also congratulated members of the Taskforce on being an invaluable asset in addressing issues surrounding the rule.

“Our goal has not been to argue policy, but to simply figure out these new rules and serve our members as well as possible,” he said.

Jackson said the department has been inundated with e-mails from those in the industry seeking guidance. HUD has answered nearly 4,000 e-mails since the beginning of the year.

“We have been trying to make sure we get through the back log of questions and get answers up to date through the FAQs,” Jackson said.

HUD provided guidance to agents concerned their lender clients are running afoul of the Rule. Concerns should be handled in this fashion:

- Share the appropriate section of the Rule or an FAQ with the lender, document your attempt.
- Require the lender to make the demand in writing, document your file.
- Follow the lender's instruction as long as it is not something egregious and criminal like handling a fee that they forgot to put on their GFE off the sheet.
- Document your file.

"If you know that it's fraud, then you should stop," Jackson said. "If it's a difference on what line a number should be put on, go ahead and proceed and just document your files."

NAIC Panel Tells Title Industry Input Needed on Data Call

Insurance regulators discussed the National Association of Insurance Commissioner's efforts to create a national title agent data call and its impact on the industry during the 2010 ALTA Federal Conference and Lobby Day.

Members of the NAIC Statistical Plan Working Group offered attendees an opportunity for dialogue with the presenters on challenges and opportunities of such a plan.

The panel included Joe Bieniek, senior regulatory services advisor, NAIC; Paula Sisneros, director of compliance and investigations, Colorado Department of Regulatory Agencies; and Dudley Ewen, chief market conduct examiner, Maryland Insurance Department. The session was moderated by Frank Pellegrini, chair of ALTA's Agents and Abstracters Section. Pellegrini also leads a group of ALTA members working with the NAIC in developing

a potential call. Those who have input on the data call should e-mail Justin Ailes at jailles@alta.org.

The panel indicated the purpose of the agent data call is to gather a better understanding of what's happening at the agent level. Sisneros said the information the group is seeking falls into four buckets: risk avoidance; business profit; business expense; and loss. The group expects to examine, among other things, number of policies, number of cancelled orders, amount of premium, premium split, salaries, rent, title plant costs, claims losses and deductibles to insurers.

Legislative, Regulatory Issues Addressed

Several legislative and regulatory issues impacting the industry and ALTA's efforts to protect the industry's interests were addressed at the Government Affairs Committee meeting during the Federal Conference.

A full room at the Marriott Metro Center listened as Kurt Pfotenhauer, chief executive officer of ALTA, touched on the proposed Consumer Finance Protection Agency, the proposed Borrowers' Right to Inspect Closing Documents Act, GSE reform and mortgage liquidity, Estate Tax, RESPA Reform, TILA Rulemaking, the NAIC's efforts to create an agent data call, and efforts at the state level to create government-run title operations.

White House Briefing

Many attendees were fortunate to participate in a visit to the White House and hear Elizabeth Vale, executive director of the White House Business Council, and Peter Swire, special assistant to the president for economic policy, National Economic

Policy, discuss the Administration's agenda for financial regulatory reform in 2010. As the attendees entered the White House, President Obama landed on the South Lawn in the Marine One helicopter.

Lobby Day

On March 3, attendees held more than 160 meetings with Members of Congress, Senators and/or their staffs, marking the association's largest Lobby Day.

In the House, ALTA members urged support for the Borrowers Right to Inspect Closing Documents Act. In the Senate, ALTA members argued that providers of title insurance and real estate settlement services, which are state regulated and do not lend credit, should not be swept up into federal financial regulatory reform. Many Senate offices were sympathetic to this view. This understanding is critical to ALTA's advocacy on the proposed Consumer Financial Protection Agency.

Shonna Cardello, president of White Rose Settlement Services in Pennsylvania, attended the Federal Conference for the first time. The 17-year industry veteran said she was impressed with the high-ranking officials who took time out of their schedule to meet and engage in dialogue with ALTA members. Cardello joined five other Pennsylvania ALTA members meeting six legislators and staff from the Keystone State.

"The meetings were invaluable," she said. "To be able to educate Congress on what we do every day is invigorating. We were able to make personal contact with the legislators staff and I plan to keep in touch with them as our industry changes."

2010 federal conference highlights



▲ U.S. Representative Spencer Bachus (R-Alabama) talks to Federal Conference attendees during the Capitol Hill reception on Tuesday Night.

2010 Federal Conference and Lobby Day Roundup

More than 175 title insurance professionals attended the largest ALTA Federal Conference and Lobby Day, held Feb. 28 - March 3 at the Marriott Metro Center in Washington, D.C.



▲ Federal Housing Administration Commissioner David Stevens agreed that trust must be re-established in the mortgage community. Stevens paid homage to the difficult task settlement agents have in the complex world of real estate finance.



▲ U.S. Rep. Ed Perlmutter (D-Colorado) provided a timeline of the mortgage meltdown and rational steps the Federal government has taken to resurrect the financial system.



▲ U.S. Sen. Scott Brown (R-Massachusetts) meets with the ALTA Delegation of Mike Conway, Ruth Dillingham, Mark Winter and Kurt Pfothenauer.



▲ Craig Haskins receives the 2009 Outstanding TIPAC State Trustee Award from TIPAC Chair John Voso.

ALTA's Title Insurance Political Action Committee honored several members who helped contribute to a successful donation campaign in 2009. Here's a list of those honored:

- Agent Award (Most Raised) – Land Title Guarantee Company (Peter Griffiths)
- Underwriter Award (Most Raised per Market Share) – Old Republic National Title Insurance Co. (John Voso Jr.)
- Underwriter Award (Most Raised) – First American Title Insurance Company (John Hollenbeck)
- Outstanding TIPAC State Trustee – Craig Haskins
- Rookie of the Year – Montana (Ted Lovec)
- Outstanding State Award (Most Contributors) – Minnesota (Tony Winczewski)



▲ FLTA President Shelley Stewart, Rep. Bill Posey (R-FL) and The Fund's Norwood Gay, discuss H.R. 4229, the Borrowers Right to Inspect Closing Documents Act.



▲ ALTA members lined up to have their RESPA questions answered by Ivy Jackson, director of the office of RESPA; Barton Shapiro, deputy director, of RESPA Interstate Land Sales; and Laura Gipe, compliance specialist; who participated on a panel moderated by Dan Wold, chairman of ALTA's RESPA Implementation Taskforce.

Calif. Title Agency Finds Differentiator to Capture Market Share

As a regional firm, Western Resources Title could not match the marketing budgets of larger competitors. The company opted to provide accurate, up-to-date real estate information, to maintain its existing client base and attract new prospects.

It's been more than a year now since California approved Senate Bill 133 and changed the way title marketing representatives can solicit title business from real estate agents, brokers, lenders, escrow officers, buyers, sellers or anyone who can direct title and escrow transactions.

In a crowded southern California housing market, regional, privately held Orange, Calif.-based Western Resources Title decided the best plan to expand its market share would be to differentiate itself through superior customer service. One of Western Resources Title's strategies is centered on supplying its real estate agent and lender customers with the most updated, reliable and accurate real estate data regarding the local market,

title and mortgage industries and overall financial climate.

Nancy Fletcher, vice president of Marketing for Western Resources Title, said SB 133 changed how the agency handled data for its customers.

"SB133 definitely leveled the playing field," she said. "Now, business decisions are based on service, knowledge of title officers and the ability to resolve problems and get transactions closed – not on inducements. Clients are constantly telling us our service is the difference, be it delivery of profiles and farm data, turnaround time on prelims or availability of the title officers and of course, experience plays a huge roll."

Fletcher said Western Resource Title meets its clients' needs by

tapping the resources of MDA DataQuick data tools, which provides information on 87 million properties.

"Given our position in the market, we understood that we had to change our business model to focus more on our clients' needs," she said. "It became clear that the easiest way to build trust with our clients was to provide thorough property data that, in turn, would help them generate business."

Implementing MDA DataQuick enabled Western Resources Title, which currently has one office and more than 50 employees, to differentiate its service from that of competitors and expand market share, according to Fletcher. The software has accelerated the data search process through setting very specific search criteria as well as saving searches for faster turnarounds on future requests. Western Resources Title, which operates in Southern California and plans to expand throughout the state within the next year, has been able to save anywhere from 30 minutes to two hours on search requests.

The title company and its clients can access property lists in groups, as defined by search criteria, instead of reviewing them individually. They can also produce sales comparables that make sense for each property. As Western Resources Title has grown – claiming over an additional 50



We Want to Hear Your Story

If your agency is doing something unique to remain competitive in the marketplace, we want to know and share it with other ALTA members. Contact Jeremy Yohe at jyohe@alta.org.

▲ Nancy Fletcher, vice president of Marketing for Western Resources Title, discusses a transaction with an employee at the agency's office in Orange, Calif.

owner properties do not show up on the MLS, and we need this information to get the accurate sales comparables. We use the sales comparables when we have a listing appointment. It's part of running a real estate business."

He added that tax assessor information on a house also plays

percent increase in business in five months – MDA DataQuick and its accurate data tools have helped employees not only meet an increasing number of needs, but surpass customer expectations. From October 2008 to March 2009, Western Resources Title experienced a 221 percent increase in title orders and 61 percent growth in title sales. The title agency is underwritten by First American and Old Republic.

"This may not sound like an obvious differentiator, but MDA DataQuick's ability to produce printable and professional profiles and formats also helps us to maintain our image and reputation with clients," Fletcher said. "We like that the profiles are available online and look professionally formatted."

David Hitt, training director and Realtor at Coldwell Banker in Sherman Oaks, Calif., said title agents that provide real estate data

■ "It became clear that the easiest way to build trust with our clients was to provide thorough property data that, in turn, would help them generate business."

help him provide answers to his clients immediately. Typically, the information requested consists of sales comparables of the properties for prospective buyers and plat maps for larger properties to see how they are situated in a development. All of this information proves useful in helping the title agent's client help their own client.

"Comparable information is pertinent when talking to a client," Hitt said. "For-sale-by-

an important role in helping a prospective buyer make a decision on a purchase,

"Sometimes, the assessor information may be inaccurate because the owner may have altered the home with a change in square footage," Hitt added. "This information tells us if they need to pull permits and do more investigating before deciding on a purchase."

Fannie Mae Issues New Addendum for REO Properties

For many years, Fannie Mae used nearly the same addendum for REO sales as banks. The addendum stated the buyer must use the seller's title agents and cost of transfer taxes and stamps would be the buyer's responsibility.

Fannie Mae issued a new addendum that allows a buyer to select his or her own title agent.

The addendum now states "The closing shall be held at a place so designated and approved by the Purchaser." This is a turnaround from previous versions wherein it stated that the purchaser must use the seller's title agent.

Fannie Mae said several changes were

made to reflect the GSE's affirmative decision to sell REO properties in a manner more traditional for sellers in the marketplace where Fannie Mae will negotiate closing costs. In a bulletin, Fannie Mae indicated the purchaser has always had the right to choose and the addendum change now reinforces that right. Fannie Mae said the retained attorney or title company will continue to act as sellers' representative and will still facilitate the closing on Fannie's behalf. Fannie suggested the settlement agents for the buyers and sellers be aware of all parties participating in the process.

New York-based Title Agency Launches Coop/Condo Service

TitleVest, a Manhattan, N.Y.-based provider of title insurance and related real estate services recently launched its Coop/Condo Due Diligence Service. TitleVest's new service provides real estate attorneys who are representing buyers of cooperative apartments and condominium units

with a transcript or abstract of any references to more than 50 relevant issues in the minutes of the Board of Directors' and annual shareholders' meetings over the prior two-year period. In addition, TitleVest will interview the coop/condo's managing agent on a pre-set list of other key issues.

Colorado Title Agency Capitalizes on RESPA Rule to Gain Market Share

While the new RESPA Rule is stonewalling real estate closings for many, Colorado Escrow & Title is experiencing just the opposite, growing relationships and building their day-to-day business as a result of their RESPA readiness.

Colorado Escrow & Title, which was founded in 1985 and recently expanded with two new offices, joined business partner RamQuest Inc. on a path to RESPA education and readiness in the spring of 2009 and is now reaping the rewards of this initiative.

"RESPA was not even on our radar, but because of RamQuest's early insight and customer education, we began to understand the impact of this regulation and decided to take action," said Don Booher, president of Colorado Escrow & Title.

Colorado Escrow & Title took advantage of opportunities offered by RamQuest for early and ongoing RESPA education from

RamQuest's RESPA experts and actively participated in alpha testing of RamQuest's 2010 HUD-1 to ensure that they were prepared.

Colorado Title & Escrow began an active RESPA marketing program in the fall of 2009 that included offering RESPA education to real estate agents and lenders.

"We have literally been in front of hundreds of potential customers in the markets we serve with RamQuest's RESPA experts or one of several key members of our team delivering our RESPA message," Booher said. "As a result, we have become the go-to for RESPA questions in our markets. This has resulted in us having a presence with many potential customers we did not previously have a presence with. All of this is adding up to new orders today and, we are confident, a shift in market share in the coming weeks"

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Changing Times

Retreat from creditors' rights coverage does not signal the end of innovation.

Rarely does ALTA modify its policy and endorsement forms to reduce coverage. But the association's recent decertification of the ALTA 21-06 Endorsement form, and the announcement by several title insurers that creditors' rights coverage is no longer available, emanates from a growing concern among title insurers and their regulators that creditors' rights coverage is no longer appropriate.

The ALTA 21-06 Endorsement provided protection to a purchaser or a lender if an insured transaction was later set aside under bankruptcy or other insolvency laws relating to fraudulent or preferential transfers.

It's important to point out that the basic ALTA policy forms themselves provide some coverage relating to creditors' rights — protection against previous transactions — that is to say, transfers in the “back chain,” being unwound because of the application of creditors' rights laws. This coverage is unaffected by the decertification of the ALTA 21-06 Endorsement.

But what is the concern? Why is this happening now? And does this recent development suggest that other title insurance coverages will be narrowed, or even eliminated?

Several factors contributed to the recent determinations to pull back coverage, including the sensitive nature of the analysis necessary to underwrite the risk, the cost to defend creditors' rights claims when they arise, recent unfavorable court decisions and the economic climate, especially as it relates to the commercial real estate market.

It's unlikely that the reduction of creditors' rights coverage will spread to other policy or endorsement coverages. And even while title insurers adjust underwriting standards to reflect market conditions and claims experience, we in the title industry must continue our long tradition of innovation.

Innovation keeps title insurance relevant, provides value to our insureds and helps grease the wheels of the real estate transaction. This innovation generally starts with ALTA's member companies, then culminates in a standardized ALTA policy or endorsement form when it's clear that the marketplace will benefit by a uniform product.

The first ALTA title policy was a loan policy, adopted in 1929. Since then, ALTA has promulgated at least 30 major revisions or completely new policy forms, not to mention scores of standardized endorsements. The changes over the years have served various purposes — rarely meant to reduce or eliminate coverage — almost always designed to either clarify or expand coverage.

So the passing of creditors' rights coverage is not the end of innovation, it's merely reflective of the issues relating to this specific risk. Both ALTA and its member title insurers understand that meaningful coverages, and continual innovation in product development, underlie the value of title insurance.



– John Hollenbeck
Treasurer, ALTA

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