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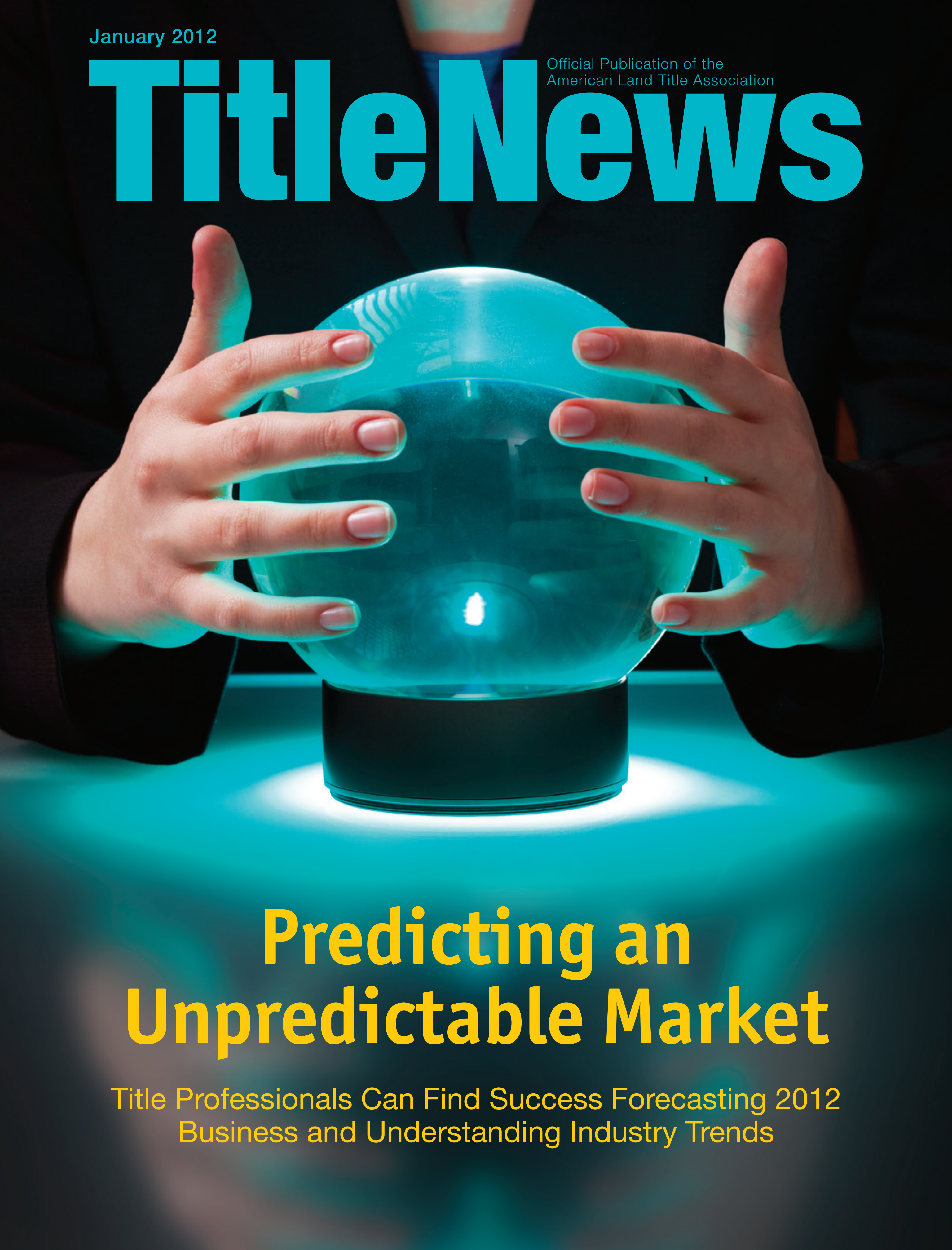

Predicting an Unpredictable Market

Title Professionals Can Find Success Forecasting 2012 Business and Understanding Industry Trends

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ALTA CONFERENCES

January 21-23	Title Agents Executive Conference *Monarch Beach, CA*
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March 25 - 27	2012 Business Strategies Conference *Louisville, KY*
May 6 - 9	2012 Federal Conference and Lobby Day *Washington, DC*
October 17 - 20	2012 Annual Convention *Colorado Springs, CO*

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September 9 - 11	Ohio
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September 13 - 15	Dixie Land *(AL,GA,MS)*

TitleNews

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AMERICAN LAND TITLE ASSOCIATION

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from the publisher's desk

New Year Brings Chance to Refocus, Prioritize and Capitalize

The past several years, we've dedicated the January edition of TitleNews to provide insight into what the mortgage and real estate market will look like for the year, market trends and where experts believe will be the best opportunities for success.

Whether economists' projections have proved accurate, forecasting and planning is an essential part of achieving success and longevity. Smart title agents understand the importance of paying attention to key statistics and then taking advantage of opportunities.

Our cover article provides a 50,000-foot view of market volume in 2012, including origination and home sale projections. We also discuss some strategies ALTA members plan to employ this year to capture market share and take a look at major trends likely to impact the title industry. Finally, we provide a case study of one city already making a sustained recovery. It might be interesting to compare and contrast your market to this city. Are you operating in an area poised for growth or decline?

Beyond looking at market trends, it's important to do an internal examination of your company. Shortly before the New Year, several members of ALTA's staff participated in a retreat to set priorities for 2012. A majority of the day included a SWOT analysis, a useful tool to understand Strengths and Weaknesses, and identifying Opportunities and Threats. Originated by Albert S. Humphrey in the 1960s, this concept is as useful now as it was then.

A SWOT analysis provides information that is helpful in matching a company's resources and capabilities to the competitive landscape. This is instrumental in strategy formulation and selection. This analysis can help you carve a sustainable niche in your market. By taking some time, you can uncover opportunities that you are well placed to exploit. By understanding weaknesses of your business, you can manage and eliminate threats.

Monitoring market trends and performing a SWOT analysis can be integral parts of every title professional's business plan.

Over the past couple of months, there have been several promising reports indicating an upward trend in housing. Despite the positive activity, the major obstacles that have troubled the housing market over the past few years still remain intact, including the oversupply of single-family homes and mounting distressed transactions.

While the return to a "normal" housing market, where supply and demand are in balance and prices are rising, remains years away, thoughtful planning and prioritizing can mean success during lean and fruitful markets. And remember, ALTA is here to help members through these times.

I wish everyone a happy and prosperous 2012!

- Michelle Korsmo, ALTA chief executive officer

Decisions, *decisions*...

Why it is important to choose to change!

W. Edwards Deering tells us that "It is not necessary to change…survival is not mandatory." And we know that this is true, especially in this time of uncertainty and in an industry challenged by regulatory changes. Title and settlement providers unwilling or unable to make the decision to change will likely not survive, much less manage to thrive, in today's volatile environment.

So how does this apply to your title business? Are you using the same technology, the same tools and approaching business with the same mind-set that you have for the last 10 to 15 years? Or is your business constrained by your software vendor's inability to be forward thinking, innovative and to provide tools that enable you to dominate in the markets that you serve? If so, then it is time. Time to make a decision. Time to make a change.

What has become status quo, having automated title and settlement production, is no longer enough. You also need precise and easy-to-use account reconciliation. You need real-time views into your operations via customized and automatic reporting for critical decision making. You need to grow and support your brand at every point of customer interaction. You need sound management tools gained from transaction management and work flow monitoring. You need common sense fraud protection that comes with positive pay and the new efficiencies that can be found with daily electronic bank reconciliations. You need cost savings from electronic document storage versus boxes and boxes of paper files. You need the expense reductions realized by engaging new and existing partners through electronic information exchange in a digital marketplace. You need to give customers on-demand, 24/7 access to the files they have open with you.

But you cannot stop with integrating capability. It is also critical to choose a business partner that is continually working to keep their finger on the pulse of the industry so you don't have to, enabling you to reap the benefits of their diligence with tools to keep your business out in front and leading in the markets you serve. You need a partner that acts as an advocate for customers, giving you a voice in legislative and industry matters while working diligently with industry professionals and regulatory agencies to properly translate new regulations into your solution. You need a partner that will give you a voice in the evolution of your software and that is as committed to your success as you are. And you need a partner that is stable and will support your business for years to come.

> What has become status quo, having automated title and settlement production, is no longer enough in itself

So make the decision to choose to change. And choose a partner that has expertise in business and business solutions so that your operation will have everything that you need to grow and sustain your high performance year after year. By doing this you choose not just to survive but to ensure that your business thrives.

Scan the code or visit ramquest.com/compare to discover how you can choose to change.

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ALTA CPL Forms Published as Final

Closing Protection Letter forms approved by the ALTA Board on Oct. 13 have passed through the comment period and are have been published with a few technical changes.

Those changes are reflected in redlines now published on the ALTA website. The previous CPLs have been decertified per the Board's action and no longer appear.

The other forms approved by the Board received numerous comments, including concerns about the re-use of existing Endorsement numbers, references to the Loan and Owner's Policies, term definitions, and potential interpretations of coverage. Due to the volume and substance of comments received, Endorsements in the 9, 12, 30 and 35 Series which were approved by the Board will be referred back to the Forms Committee for further analysis and development.

NAIC to Analyze Risk-Based Capital for Title Insurers

The National Association of Insurance Commissioner's Capital Adequacy (E) Task Force held a conference call Dec. 14 to develop a subgroup to identify major risks for title insurance and if it makes sense to develop a risk-based capital formula for title insurers or modify the current P&C risk-based capital formula to add risks associated with title insurance.

During a previous call, the NAIC's Capital Adequacy (E) Task Force described several distinct risks associated with title insurance risks and debated whether they were quantifiable. The Task Force also discussed whether the current property and casualty risk-based capital formula could be adapted for title insurers.

ALTA will monitor this and report any developments.

ALTA Task Force Meets With CFPB; Shares Concerns of Draft Final Disclosure

ALTA's RESPA Task Force met Dec. 6 with staff from the Consumer Financial Protection Bureau (CFPB) to discuss concerns with the Bureau's draft settlement disclosure forms and the RESPA reform process.

The CFPB is combining the Truth in Lending disclosure and HUD-1 Settlement Statement to create a new HUD-1. In its first effort to combine the forms, the CFPB created two drafts: a six-page form called Ironwood Bank and a five-page disclosure called Hornbeam Bank. The Bureau expects to conduct four more rounds of testing and revisions through February 2012.

To improve the draft settlement disclosure form, the Task Force suggests the Bureau:

- *Separate the form into two parts;*
- *Make the form a final disclosure;*
- *Itemize for transparency;*
- *Reform the use of tolerances;*
- *Discontinue the use of provider lists;*
- *Connect the initial disclosure to the final disclosure;*
- *Improve the Paid Outside of Closing column; and*
- *Work with software providers.*

The Task Force also sent a letter to the Bureau explaining these issues in detail.

"As it reviews each draft disclosure issued by the CFPB for feedback, ALTA's Task Force focuses on two questions: How should the closing disclosure benefit a consumer; and, how should real estate settlement providers utilize the form?" the Task Force said in its letter to CFPB.

As with all of the Task Force's meetings with HUD and the Bureau over the past three years, the goal is to continue to be a resource to policymakers on RESPA issues. If you have questions for the CFPB please reach out to Steve Gottheim, ALTA's legislative and regulatory counsel, at *sgottheim@alta.org*.

The Industry's Future is being Shaped Now – Be Part of the Discussion

The way the industry operates is facing a tremendous sea change. From the handling of funds to the closing table, title professionals must keep abreast of how these changes will impact operations. With the CFPB promoting more transparency to the mortgage process and developing a new mortgage disclosure, another new HUD-1 will eventually be created. Also, regulators are focused on addressing defalcations and creating solutions to protect money held in escrow.

The general sessions at the 2012 Business Strategies Conference, which will be held March 25-27 at the Marriott Louisville in Louisville, Ky., will help you understand how to promote consumer shopping, explain title insurance in simple terms and find solutions to reduce fraud and escrow theft.

Here's a look at the three general sessions:

ALTA policy forms have evolved tremendously over the years, and now provide unquestionably the best coverage ever available to purchasers of one-to-four family residential properties. But do you know what's actually being insured? Do you know how to explain the policy so that the consumers can understand what's covered and what's excluded? To open the conference on Monday, March 26, ALTA President Chris Abbinante, Fidelity National Title Group, will give the presentation "Explaining a Policy So Grandma Understands." This is a must-attend general session for all title professionals as the industry embarks on a mission to explain what the industry does in a simple jargon-free manner.

Following that presentation, a panel of industry experts will discuss marketing to consumers in the session titled "Ready, Set … Engage! The Title Industry, CFPB and Consumers." ALTA RESPA Implementation Task Force members and a representative from the Consumer Financial Protection Bureau (CFPB) will explore this emerging trend. The panel will discuss what the CFPB is doing to engage consumers and how title agents can become involved in the process and capitalize on this trend.

The general session on Tuesday, March 27 will focus on fighting fraud in the current market. With regulators increasingly assigning liability for escrow theft, and putting regulations together that focus on solvency of agents and underwriters, it is important that this industry provide solutions, or they will be provided to us. Industry experts will discuss findings of a national survey examining the latest trends in mortgage fraud and escrow theft, what best practices companies follow to thwart fraud and what solutions the industry believes are the most viable to implement.

Go to *www.alta.org/meetings/businessstrategies* for more information.

Title Industry Operating Income Up 1.7 Percent

Operating Income for the industry for the first nine months of 2011 increased 1.7 percent compared to the first nine months of 2010, according to ALTA's market share and financial statement compilations.

The data shows Loss and Operating Expenses were lower by 1 percent in the third quarter of 2011, which resulted in an improvement in nine-month Operating Gain of $202.1 million and an improvement in Net Income of $72.5 million.

The third quarter of 2011 showed a decline in Operating Income of 4.7 percent, however, this was coupled with a 5.3 percent decline in Loss and Operating Expense, resulting in a Net Operating Gain improvement of $17.7 and a Net Income improvement of $3.3 million.

The industry remains in a strong financial position at Sept. 30, with Admitted Assets of more than $8.2 billion, including more than $7.2 billion in Cash and Invested Assets. Also, Statutory Reserves were almost $4.7 billion and Statutory Surplus was over $2.7 billion.

Check out the breakdown of premiums by state on Page 16.

Michigan Supreme Court Rules in Favor of ALTA-Supported MERS Case

At the urging of the American Land Title Association, the Michigan Supreme Court on Nov. 16 reversed an earlier court of appeals ruling that found the Mortgage Electronic Registration Systems (MERS) did not hold the right to foreclose.

In a 4-3 decision, Chief Justice Robert Young Jr. and three other judges wrote that MERS is a valid record holder in Residential Funding Corp. v. Saurman/Bank of New York v. Messner. "MERS owned a security lien on the properties, the continued existence of which was contingent upon the satisfaction of the indebtedness – i.e., the ownership of legal title to a security lien whose existence is wholly contingent on the satisfaction of the indebtedness – authorized MERS to foreclose by advertisement," said the justices in their opinion. "The court of appeals' conclusion to the contrary is inconsistent with established legal principles governing Michigan's real property law, and specifically foreclosure by advertisement."

In April, the Michigan Court of Appeals ruled in Residential Funding Corporation v. Saurman/Bank of New York v. Messner that MERS does not meet the requirements under Michigan statute to foreclose by advertisement because the court holds that MERS is not an owner of an interest in the indebtedness. As such, the court held that the foreclosure was void from the beginning.

ALTA filed an amicus brief urging the Supreme Court to reverse a lower court's decision because it "ignored prior case law upholding the right of a mortgagee who holds less than ownership of the indebtedness secured by the mortgage to foreclose."

"The Michigan Supreme Court's decision will help bring clarity to the validity of foreclosures that occurred in the name of MERS over the past two years," said Steve Gottheim, ALTA's regulatory and legislative counsel. "With this certainty, title companies should be able to safely insure the ownership of the properties allowing lenders to sell them as REO. However, the real winners today are Michigan homeowners who will know that if they bought a foreclosed home, their ownership to their property won't be challenged or taken away."

ALTA Member Exclusive Benefit: Title Insurance Education Articles

Members of ALTA have exclusive access to several articles covering a variety of title insurance topics, which can be used to send to local media outlets or to educate consumers, legislators or regulators about the benefits of title insurance. These articles can be used as they are – just add your name and bio information – or revise them to give them a personal touch by including information pertinent to your local area.

Here's a list of the articles:

- *Title Insurance is Not "Just Another Fee"*
- *Understanding The Closing Process*
- *The Cost of Title Insurance is Worth the Investment*
- *Do You Really Need Title Insurance?*
- *What Every REALTOR Should Know About Title Insurance*
- *Title Insurance Protects Your Investment*

ALTA also has developed an article titled "Title Insurance Vital to Protecting Homebuyers" to help combat misconceptions in the marketplace stemming from the foreclosure paperwork issues and help explain the protections provided by title insurance.

The article explains what title insurance is, the different title insurance policies, the steps taken to issue a policy, how it differs from other insurance products, how a policy can protect consumers and what questions consumers should ask before purchasing a policy.

These articles can be a useful tool for members to submit to their local newspapers in order to educate consumers on the value of title insurance and the importance of purchasing an owner's policy.

For more information, contact Jeremy Yohe, ALTA's director of communications, at *jyohe@alta.org*.

Predicting an Unpredictable Market

Title Professionals Can Find Success Forecasting 2012 Business and Understanding Industry Trends

For the past several years, predictions on a market recovery have ranged significantly – from upturns touted as being right around the corner to more conservative projections. The coming year looks to be no different. Trends indicate consumers are in a "wait and see" pattern regarding home prices, which will result in slower economic growth for the title industry in 2012.

During ALTA's Annual Convention in October, Doug Duncan, vice president and chief economist of Fannie Mae, said the industry is five years away from returning to normal market conditions. In December, he followed up saying consumer home price expectations improved slightly, but consumers remained concerned about the direction of the economy and continued to view their household finances as being relatively flat. >>

By Jeremy Yohe

"Most Americans expect no improvement in their personal financial situation in the next 12 months and will likely remain wary about undertaking the significant financial obligation associated with homeownership until their view of their income, expenses and job security heads in a more positive direction," Duncan said.

While the industry is not out of the woods, several indicators seem to show the nation's real estate balance sheet is slowly turning around. The unemployment rate dropped to 8.6 percent, even as the labor participation rate dropped to about 62 percent. Better news is that the U-6, which is the broadest measure of unemployment, fell below 16 percent for the first time since the Great Recession started. Creating jobs that pay enough for consumers to buy a home and afford their mortgage are paramount to turning the housing market around.

Another boost to the housing market is that mortgage interest rates remain under 4 percent for a 30-year fixed-rate mortgage, while rates for 15-year mortgage are ranging from 3 to 3.25 percent.

Commercial Outlook

Office Markets

Vacancy rates in the office sector are expected to fall from 16.7 percent in the current quarter to 16.1 percent in the fourth quarter of 2012. The markets with the lowest office vacancy rates presently are Washington, D.C., with a vacancy rate of 9.3 percent; New York City, at 10.3 percent; and New Orleans, 12.8 percent.

Industrial Markets

Industrial vacancy rates are projected to decline from 12.3 percent in the fourth quarter of this year to 11.7 percent in the fourth quarter of 2012. The areas with the lowest industrial vacancy rates currently are Los Angeles, with a vacancy rate of 5.2 percent; Orange County, Calif., 5.7 percent; and Miami at 8.4 percent.

Retail Markets

Retail vacancy rates are likely to decline from 12.6 percent in the current quarter to 11.8 percent in the fourth quarter of 2012. Presently, markets with the lowest retail vacancy rates include San Francisco, 3.7 percent; Long Island, N.Y., and Northern New Jersey, each at 5.7 percent; and San Jose, Calif., at 6.0 percent.

Multifamily Markets

The apartment rental market – multifamily housing – is expected to see vacancy rates drop from 5.0 percent in the fourth quarter to 4.3 percent in the fourth quarter of 2012; multifamily vacancy rates below 5 percent generally are considered a landlord's market with demand justifying higher rents. Areas with the lowest multifamily vacancy rates currently are Minneapolis, 2.4 percent; New York City, 2.7 percent; and Portland, Ore., at 2.8 percent.

Source: *National Association of Realtors*

'Anemic Growth'

Although there are nuggets of optimism, the Mortgage Bankers Association (MBA) said the economy will see another year of anemic growth in 2012 before picking up steam in 2013. Mortgage originations are expected to fall from an estimated $1.2 trillion in 2011 to $900 billion in 2012. The drop will be driven by a significant decline in refinance originations, while purchase originations will increase only slightly. Refinance originations are expected to fall despite low mortgage rates as economic uncertainty lingers and fewer eligible borrowers remain.

"We think growth driven by consumer spending on durables and business spending on new plants and equipment will keep the U.S. out of recession, but there is significant uncertainty around this forecast," said Jay Brinkmann, MBA's chief economist and senior vice president for research and education. "Europe is in or soon will be in recession. There is the risk that the European situation could harm the U.S. financial system, and could lead to further damage to U.S. consumer and business confidence."

Despite the uncertainty, Brinkmann said there is a path for the economy that could lead to above-trend growth in 2012. Housing inventory and shadow inventory are declining steadily. While odds for this are low, a more robust housing market recovery could spur faster overall growth. Regardless of which path the economy and mortgage rates take, the MBA predicts another tough year, with origination volumes at their lowest point since 1997.

The uncertain market conditions have left title agents continually speculating and adjusting order projections.

"It's been very difficult to predict volume over the past few years and I suspect that will apply to 2012 too," said Jeff Green, president of Wisconsin-based Knight-Barry Title Group. "There are some helpful sources like the Mortgage Bankers Association, National Association of Realtors, Fannie Mae or mortgage insurance companies, but even their indexes aren't perfect."

Roger Hannaford III, Hannaford Abstract and Title Co. in Marion, Kan., said order volume has remained consistent in his market the past two years and expects 2012 to be similar.

"I look forward to another good year, not fantastic but good," he added.

Hannaford doesn't anticipate adding staff to the company's five employees, and will continue to focus on new real estate sales, refinances and reverse mortgages. Causing alarm is the decline of housing prices in the Midwest in small communities similar to Marion.

"The survival of small towns in Kansas is becoming a real big concern," Hannaford said.

"Once most consumers begin to think positively again about real estate, things will turn quicker," he said. "I'm also hoping to see improved employment numbers. The elections are too far away at this point to calculate what type of impact they will have on the real estate industry."

Meanwhile, the Knight-Barry team is projecting incremental growth in the commercial sector, while residential business will be dominated by REO transactions.

"It's pretty obvious that REO transactions will continue to be strong since lenders still own a ton of properties and will be looking to get them off their books next year," Green said.

Foreclosures, unfortunately, will continue to weigh on the market. Lender Processing Services (LPS) reports that mortgage delinquencies have declined nearly 30 percent off their January 2010 peak, but foreclosure inventories are on the rise, reaching an all-time high at the end of October with 4.29 percent of all active mortgages. An even bigger problem is these properties are taking a long time to move through the pipeline. LPS reports the average days delinquent for loans in foreclosure

Key Market Projections for 2012

- **Real GDP:** Growth in 2012 will trend closely to 2011, showing growth of around 1.7 percent, as Europe enters a recession of its own and the U.S. economy flirts with a shallow recession until midway through the year.
- **Unemployment Rate:** Will increase slowly until the second quarter of 2012, hitting 9.3 percent, from the current level of 9.1 percent. Even though both economic and job growth are in positive territory, they are still insufficient to lower the unemployment rate in the near term.
- **Fixed Mortgage Rates:** Expected to remain low by historical standards, finishing 2011 at around a 4.5 percent average for the year, falling slightly to 4.4 percent for 2012 and climbing back up to 4.9 by 2013.
- **Total Existing Home Sales:** Will stay around the 4.9 million unit pace for 2011 and 2012, before increasing slightly to 5.2 million units in 2013 as the broader economy recovers. The recovery in the new home sales will have a comparably slow start, and may well be slow for most of 2012, but will show some meaningful increases in 2013.
- **Home Prices:** Measures that exclude distressed transactions have stabilized, and certain markets are showing year-over-year appreciation. FHFA's national repeat transactions home price measure, which does not distinguish between distressed and non-distressed sales, will continue to decline before starting a reversal in mid to late 2012, but will vary by state and home value.
- **Purchase Originations:** Will likely decrease in 2011 from 2010, totaling $400 billion from an estimated $472 billion in 2010. Seeing as 2012 will likely be another year of slow economic growth, purchase originations will increase slightly to about $412 billion for the year. As the economy picks up a little more speed in 2013 and home sales and home prices also start to increase, purchase originations are expected to increase to $770 billion for the year.
- **Refinance Originations:** Will be lower than in 2010, falling to $783 billion from an estimated $1.1 trillion, as there were fewer eligible borrowers left to refinance. Expect this "burnout" to continue through 2012 and 2013, even as rates remain below 5 percent, with refinance originations falling steadily to $495 billion and then $332 billion, respectively.

Source: *Mortgage Bankers Association*

extended as well, setting a new record of 631 days since last payment, while the average days delinquent for loans 90 or more days past due but not yet in foreclosure decreased for the second consecutive month.

Judicial vs. non-judicial foreclosure processes remain a significant factor in the reduction of foreclosure pipelines from state to state, with non-judicial foreclosure inventory percentages less than half that of judicial states. This is largely a result of the fact that foreclosure sale rates in non-judicial states have been proceeding at four to five times that of judicial.

While it's taking longer for foreclosures to get through the pipeline, short sales will be a viable option and continue to be a source of business for title agents. Lenders have significantly upgraded their short sale processes and are "more efficient in responding quicker to payoff requests and more aggressive in putting a deal together," Green said.

While forecasts remain unpredictable, Knight-Barry is an example of one company that is surviving through expansion. In 2011, the company made three acquisitions while opening up two new offices. Expansion plans are in the works for 2012 as well, including the opening of a commercial office in Chicago this month.

"There are acquisition opportunities as some long-time title owners are getting frustrated by the market conditions, which creates opportunities for us to enter new markets," said Craig Haskins, executive vice president of Knight-Barry.

The expansion will require the company to continue improving its technology to keep back office business processes efficient in 2012 and beyond. Knight-Barry also has invested in video equipment to help train a staff spread across three states and 20 offices.

"Training via video is more effective than asking people to sit around a conference room telephone to take notes," Haskins said.

Jeff Bosse, founder and president of Evansville, Ind.-based Bosse Title, is predicting the market to make a positive turn this year. His company ended 2011 making an acquisition of the oldest title company in Southwestern Indiana.

"We are very bullish on the Evansville economy and we are ramping up for the future, expecting 2012 to be an excellent year and 2013 to be a gangbuster," said Bosse, adding that his company is prepared to make further strategic acquisitions in 2012 to enhance service or product offerings.

Housing Perspective

Although the housing market struggled to maintain an even footing in 2011, gradual improvement is expected in 2012 and beyond, the National Association of Realtors (NAR) projects. Lawrence Yun, chief economist of NAR, said home sales should be stronger.

"Tight mortgage credit conditions have been holding back home buyers all year, and consumer confidence has been shaky recently," he said. "Nonetheless, there is a sizeable pent-up demand based on population growth, employment levels and a

Revised 11/18/2011

Major Economic Indicators

	2010		2011				2012				2013		Annual Totals						
Indicator	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	2007	2008	2009	2010	2011	2012	2013
Real GDP (%)	2.5	2.3	0.4	1.3	2.5	2.5	2.3	2.3	2.7	2.7	3.0	3.3	2.2	-3.3	-0.5	3.1	1.7	2.5	3.5
Consumer Prices (%) a.	1.4	2.5	5.2	4.1	3.1	1.5	2.0	2.0	2.0	2.0	2.0	2.0	4.0	1.6	1.5	1.2	3.5	2.0	2.0
Unemployment Rate (%) b.	9.6	9.6	8.9	9.1	9.1	9.1	9.1	9.0	8.9	8.8	8.5	8.3	4.6	5.8	9.3	9.7	9.1	9.0	8.2
30-Year Fixed Mtg. Rate (%) b.	4.4	4.4	4.9	4.7	4.3	4.0	4.2	4.4	4.6	4.8	5.0	5.2	6.3	6.0	5.0	4.7	4.5	4.5	5.3
1-Year Treas. Indexed ARM Rate (%) b.	3.3	3.3	3.3	3.1	2.9	2.9	3.0	3.0	3.0	3.0	3.1	3.2	5.6	5.2	4.7	3.8	3.0	3.0	3.3
10-Year Const. Mat. Treas. Rate (%) b.	2.8	2.9	3.5	3.2	2.4	2.1	2.3	2.5	2.7	2.9	3.2	3.4	4.6	3.7	3.3	3.2	2.8	2.6	3.5
1-Year Const. Mat. Treas. Rate (%) b.	0.3	0.3	0.3	0.2	0.1	0.1	0.1	0.1	0.2	0.2	0.3	0.4	4.5	1.8	0.5	0.3	0.2	0.2	0.5

Housing and Mortgage Markets

	2010		2011				2012				2013		Annual Totals						
Indicator	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	2007	2008	2009	2010	2011	2012	2013
Housing Starts c.	0.58	0.54	0.58	0.57	0.61	0.60	0.60	0.65	0.70	0.75	0.80	0.85	1.36	0.91	0.55	0.59	0.59	0.68	0.93
Total Home Sales d.	3.95	4.47	4.77	4.61	4.62	4.58	4.65	4.70	4.80	5.05	5.30	5.40	5.72	4.84	4.94	4.63	4.65	4.80	5.40
FMHPI House Price Appreciation (%) e.	-3.3	-3.5	-2.1	1.9	-0.7	-1.8	-1.5	1.5	0.0	0.0	0.4	0.9	-5.0	-11.7	-2.3	-6.1	-2.7	0.0	2.0
S&P/Case-Shiller® Home Price Index (%) f.	-1.9	-3.5	-4.1	3.6	2.0	-2.5	-2.0	2.0	0.0	0.0	0.5	1.0	-8.4	-18.4	-2.4	-3.7	-1.2	0.0	2.0
1-4 Family Mortgage Originations g.																			
Conventional	$366	$442	$264	$218	$235	$283	$205	$234	$228	$188	$318	$383	$2,312	$1,310	$1,549	$1,300	$1,000	$855	$805
FHA & VA	$95	$100	$76	$67	$69	$88	$65	$75	$70	$70	$70	$84	$120	$290	$451	$377	$300	$280	$260
Total	$461	$542	$340	$285	$304	$371	$270	$309	$298	$258	$388	$467	$2,432	$1,600	$2,000	$1,677	$1,300	$1,135	$1,065
ARM Share (%) h.	5	4	8	11	12	12	12	12	12	13	13	13	10	7	3	5	11	12	14
Refinancing Share - Applications (%) i.	81	82	69	70	78	77	77	75	70	60	60	65	42	48	70	76	74	71	65
Refinancing Share - Originations (%) j.	71	77	71	56	68	80	77	72	65	55	60	60	49	50	68	67	69	67	60
Residential Mortgage Debt (%) k.	-2.7	-2.1	-2.6	-1.9	-1.5	-2.0	-1.0	2.0	1.5	1.5	3.0	3.5	7.1	-0.4	-1.6	-3.0	-2.0	1.0	4.0

doubling-up phenomenon that can't continue indefinitely. This demand could quickly stimulate the market when conditions improve."

Existing-home sales are forecast to edge up about 1 percent this year, and then rise another 4 to 5 percent in 2012. Based on NAR's current projection model, existing-home sales would total 4.96 million in 2011.

New-home sales are expected to be rise to 372,000 in 2012 after hitting a record low in 2011. Housing starts are forecast to rise to 630,000 this year from 583,000 in 2011.

With falling inventory, the median home price should rise in 2012. "Home prices have yet to show a definitive stabilization pattern in most areas. Still, given an over-correction in prices, there likely will be moderate appreciation in 2012," Yun said. "Once home prices turn positive on a sustained basis, consumer confidence will rise and help the broader economy to improve."

Richard Peach, senior vice president at the Federal Reserve Board of New York, said the economy continues to underperform, adding "nearly two-and-a-half years since the end of 'the great recession,' the economy continues to operate well below its potential. Among the significant structural impediments are the legacy of the housing boom and bust, and fiscal contrition at the state and local level."

Peach said the current business cycle remains 7 percent below its peak and is longer than other recession cycles since 1953. He believes there is a sizeable level of shadow inventory that will result in rising foreclosures and offered a plan to reduce backlog.

"My idea is to allocate certificates to 2.5 million service members who served in Afghanistan and Iraq that could be used as a downpayment on a foreclosed home in the Fannie or Freddie portfolio," he said. "This would help to absorb the inventory and stabilize the housing market."

Market Trends

As far as mortgage products are concerned, Pat Stone, president and chief executive officer of WFG National Title Insurance Co., said the plain "vanilla" mortgage loan won't prevail for long. He's calling for a return to more creative mortgage products within a few years.

"There seems to be an axiom growing on Main Street that only A-paper borrowers should be able to own homes," he said. "This assertion is preposterous and proven wrong every day by the millions of subprime homeowners making regular payments on their alternative mortgage products."

There could also be a major shift in homebuyers as non-traditional families influence the market. The maturing Generation Y has a different attitude toward housing. Renting is not taboo and carrying less debt and more savings are among Generation Y traits.

"Should this continue, demand may swing to shorter-term, fixed-rate loan products," Stone said. "We are already seeing a rise in demand for the 15-year, fixed-rate mortgage."

As the face of the borrower changes, so do their needs and expectations. Younger consumers entering the market were among the first to obtain student loans online and will expect the same ability when purchasing a home.

"This is a generation very comfortable swiping credit or debit cards for even the smallest transactions, and unwilling to wait long for the transaction to be processed," Stone said. "Americans will increasingly expect to be in newly purchased homes in a matter of days or weeks rather than weeks or months. Although that may seem like a pipe dream today, the market will push our industry in that direction and we will be forced to make it happen."

There's also regulatory and market pressure to streamline, modernize and make the real estate transaction more efficient and transparent. Consumer-focused innovation will increasingly be rewarded by the market – or at least by those overseeing its regulation, according to Stone. The bottom line is that title agents should expect change in the way business is conducted.

"It may start slowly, but it will accelerate exponentially, leading to a very different way of selling homes and mortgages in the next several years," Stone said. "While origination volume will likely remain lower in the short term, compliance and operational costs will spike, squeezing already thin margins. Regulatory pressure – no matter which party dominates our nation's capital after 2012 – will not simply disappear. More importantly, our market – with its changing demographics, needs and perceptions of the industry as a whole – is not going away, either. This is good news, but only for those willing to adapt."

Jeremy Yohe is ALTA's director of communications. He can be reached at *jyohe@alta.org*.

State Summary of Title Insurance Premiums Comparative Market Share Analysis Nine Month 2011 vs. Nine Month 2010 Total Premium			
State	Premium Written 9/30/2011	9/30/2010	% Increase/ Decrease
1 California	962,621,468	1,019,528,757	-5.6%
2 Texas	835,495,118	755,258,713	10.6%
3 Florida	530,427,282	502,371,353	5.6%
4 New York	518,279,464	462,943,276	12.0%
5 Pennsylvania	297,063,355	294,403,788	0.9%
6 Arizona	244,276,042	263,988,260	-7.5%
7 New Jersey	226,509,223	235,037,411	-3.6%
8 Ohio	209,765,448	215,793,956	-2.8%
9 Canada	192,064,005	175,489,402	9.4%
10 Virginia	191,369,909	208,558,621	-8.2%
11 Michigan	183,303,347	181,472,260	1.0%
12 Illinois	174,869,260	178,418,205	-2.0%
13 Colorado	169,730,570	168,178,307	0.9%
14 Washington	161,987,853	181,134,563	-10.6%
15 Massachusetts	147,553,894	145,760,268	1.2%
16 Maryland	130,658,846	132,466,076	-1.4%
17 Oregon	114,428,404	118,191,539	-3.2%
18 Georgia	114,175,488	119,910,732	-4.8%
19 Nevada	110,989,369	112,606,522	-1.4%
20 Utah	101,971,850	125,477,197	-18.7%
21 Wisconsin	81,993,261	83,909,347	-2.3%
22 Minnesota	80,918,863	77,438,780	4.5%
23 Tennessee	76,907,620	73,546,399	4.6%
24 Louisiana	75,256,852	76,603,593	-1.8%
25 Connecticut	71,861,650	72,785,057	-1.3%
26 North Carolina	69,772,050	68,983,170	1.1%
27 Indiana	60,169,315	61,018,157	-1.4%
28 South Carolina	57,262,587	58,681,169	-2.4%
29 Idaho	55,174,326	64,574,494	-14.6%
30 Alabama	47,623,656	49,591,048	-4.0%
31 New Mexico	47,216,242	50,829,667	-7.1%
32 Hawaii	43,352,589	41,763,695	3.8%
33 Kentucky	40,087,247	39,446,128	1.6%
34 Aggregate Other Alien	40,003,430	29,994,085	33.4%
35 District of Columbia	38,829,083	32,352,034	20.0%
36 Oklahoma	38,550,234	40,065,612	-3.8%
37 Missouri	32,819,422	32,146,464	2.1%
38 Nebraska	32,673,697	31,893,314	2.4%
39 Kansas	29,928,234	27,299,272	9.6%
40 Arkansas	29,387,245	28,397,282	3.5%
41 Montana	27,823,406	31,000,512	-10.2%
42 Alaska	25,805,799	22,199,493	16.2%
43 Delaware	24,154,194	21,763,470	11.0%
44 Mississippi*	21,559,909	22,493,038	-4.1%
45 New Hampshire	20,218,895	19,816,362	2.0%
46 Maine	17,790,338	19,781,361	-10.1%
47 Wyoming	15,990,997	16,979,504	-5.8%
48 Rhode Island	14,947,866	16,985,630	-12.0%
49 Puerto Rico	13,390,841	12,671,396	5.7%
50 South Dakota	12,465,473	11,166,239	11.6%
51 West Virginia	11,936,472	11,197,671	6.6%
52 Vermont	9,365,955	9,339,689	0.3%
53 Iowa	7,196,298	5,610,975	28.3%
54 North Dakota	6,084,550	5,071,542	20.0%
55 Guam	3,099,824	3,526,675	-12.1%
56 Mexico	1,783,120	1,744,468	2.2%
57 US Virgin Islands	1,038,647	941,304	10.3%
58 Northern Mariana Islands	71,837	(791,488)	N/A
Totals	$6,902,052,219	$6,869,805,814	0.5%

What's New for 2012? Flexibility is the Name of the Game for Title Companies

Here's a look at four major trends likely to affect title and settlement services operations in the New Year and beyond.

Once again, it's the time of year when business owners and managers must look ahead and finalize business planning for 2012 and beyond. While it may seem that our industry has been living the same year over and over again since 2006, it does appear that some semblance of "normal" is beginning to return. For any title or settlement services firm, uncertainty is the greatest inhibitor, especially for that firm's operations. So what should we expect to see from an operations/production standpoint in 2012?

The Market – Still Scraping the Bottom or Start of a Slow Recovery?

No business can begin its strategic planning process without some hint of what the market will hold. We are a revenue-driven industry, and knowing where the orders will come from will drive what we are able to do. For several years, a roiling economy has made the forecasting process a dicey proposition at best; it's been more like throwing a dart or shaking the "magic eight-ball" than applying metrics and economic principles. Each year since 2007 has seemingly been forecast by pundits as both the impending end of the world and the beginning of a slow recovery. Neither has become reality … yet.

Many economists and thought leaders are now predicting that 2012 will be much like 2011. In other words, the entire mortgage industry will continue to either scrape along the proverbial "bottom" of this extended slump or slowly begin a long-term recovery. In either scenario, it seems unlikely that we will see a sharp increase in originations, home pricing or even employment. There will likely be no "hockey stick" recovery.

Additionally, our market will continue to be affected heavily by an inconsistent and rapidly changing legislative and regulatory environment. The aftermath of the "robo-signing" saga continues. The Consumer Financial Protection Bureau (CFPB), with its sweeping authority and powerful enforcement

mechanisms, is only now getting its legs beneath it; and few can accurately say how and where it will focus its energy. We can look forward to yet another change in the way we process settlement documents as the “new and improved” GFE-Truth in Lending and final disclosure forms make their way toward a final format. The entire mortgage industry – including settlement services – continues to bear the scrutiny of the public and mainstream media. And, to top it off, 2012 is a national election year. Uncertainty, therefore, will be the name of the game yet again.

What this means for settlement services firms is likely more inconsistency. We can expect an order count similar to that seen in 2011 and one that comes in fits and starts, spikes and dips. We will also operate under the probability that regulatory action will again upend our operations and production processes. All of these factors will have a very real impact on how title and settlement services firms do business in 2012.

Trend Number One: Flexible, Scalable Systems

The most expensive proposition for any business, settlement services or not, is increasing its staff. In 2012, many firms may face periods of extreme activity followed by periods of relative inactivity. Because of the uncertain nature of revenue streams, most firms will not have the luxury of hiring and training staff, then keeping them aboard when the order counts abate.

Similarly, the likelihood of more regulatory influence over our processes means that the technology and systems we use may need to be changed or adjusted. This will require that our providers be flexible – and fast – to keep us compliant (and the deadlines seem to get shorter and shorter). One option for firms looking to remain flexible will be web-based technology, often referred to as “the Cloud.”

Because cloud-based technologies require virtually no hardware investment (one can access a workstation anywhere one can find Internet access) or office-based servers, they offer a good deal of flexibility for firms weary of changing out their workstations and systems. Most tend to involve a minimal “up front” cost. More importantly, cloud-based systems are scalable. A business only pays for what it needs month to month. Thus, if a surge of REO-based orders is followed rapidly by another regulatory tremor, followed by a dip in order count, a firm using cloud-based technologies can reduce its technology costs to suit.

Cloud-based systems are also updated remotely, and do not require internal effort or support. In a world where almost every aspect of the way we do business could be changed at any time by law, rule or lawsuit, this advantage may prove to be critical.

Finally, cloud-based systems allow for a great deal of mobility. In this day and age, title and settlement firms need every advantage to compete for a shrinking amount of business. Being mobile is becoming a requirement for a good many in our industry. Those with access to their data and technology, wherever they might be, will have an edge.

Trend Number Two: Outsourcing

In spite of the controversy outsourcing can generate, the fact remains that few businesses can afford large numbers of personnel.

> The entire mortgage industry continues to bear scrutiny of the public and mainstream media. To top it off, 2012 is a national election year.

The title industry has always operated on razor-thin margins. Coupled with a start-and-stop revenue stream, this means that many companies face the twin threats of underutilized resources in slow periods, and a stark inability to handle high order counts (plus quality control issues) during brief spikes. Neither is a palatable option.

Whether one is “off-shoring” or “on-shoring,” the fact is that outsourcing isn’t what it used to be. The quality of such services, long the disadvantage of such an approach, is improving. No business owner wants to “leave money on the table” when an order spike crashes on an understaffed firm. Even fewer wish to bear the burden of a staff which is far too large for the revenue stream and workflow during the frequent lulls we face. Simply staffing up for each spike is cumbersome, and training takes too long. Outsourcing, however, offers flexibility and capacity. With improved communication and quality control methods in place, more settlement services firms are starting to see the benefit, and will continue to do so in 2012.

Trend Number Three: Collaboration and Partnership

Capturing one's share of the diminished market means, many times, increasing one's service area or geographic footprint. Increasingly, lenders, underwriters and vendor management firms are seeking to work with settlement services firms who cover large areas. Such an approach spares the source of business the added expense and time necessary to managing a large number of providers. As such, we are now seeing, and will continue to see, many small to mid-sized settlement services firms aligning themselves in partnerships, formal or otherwise, to offer an expanded geographic footprint. There will continue to be a place for the small, family-owned firm in our industry. It would be impossible to replace the experience, expertise and local knowledge such firms often provide – especially as it becomes more important than ever for national firms to understand the compliance nuances of every municipality in which they do business. But "mom and pop" firms will struggle to survive offering service in only three or four counties. Collaboration will only increase in 2012 to meet demand.

Trend Number Four: Increased Compliance Awareness at All Levels

The most discussed topic of the past two years, compliance will continue to be on the minds of settlement services executives and owners in 2012. Embarrassed by the public scrutiny affixed upon them for their lax oversight during the refinance boom, many federal agencies will work to prove a point in 2012. The emergence of the CFPB, with its daisy-cutter-like arsenal of enforcement options, will also have an impact upon how we do business.

With potential liabilities increasing, it will be in everyone's best interest to be aware of the law of the land, and work to stay compliant with it.

And then there is the unknown. What will the final GFE-TIL and final disclosure forms look like? Will affiliated arrangements continue to be legal? Will the CFPB, HUD or another agency change the way GFE-HUD-1 variances are enforced? Will state departments of insurance and attorneys general take increased interest in our industry? Change and uncertainty will remain with us – perhaps increasing – in 2012.

As a result, not only will title and settlement owners and executives be spending more time than ever with counsel and in compliance seminars, but this increased awareness will further spread through our operations managers and personnel.

With potential liabilities increasing, it will be in everyone's best interest to be aware of the law of the land, and work to stay compliant with it. This may mean increased training expense; more hands-on management and even a lengthier quality control or compliance review process.

Firms will need to find ways to get their staff up to speed quickly, effectively … and inexpensively.

2012 will not likely be a year of dramatic change for our industry. Instead, we can expect a slight intensification of the trends of 2011.

The market will remain fairly stable overall, with spikes and dips in originations all year. Rules, ordinances and laws will continue to pour forth with significant impact on our businesses.

This year, more than ever, title and settlement businesses will need to be creative, flexible and scalable in order to stay competitive. Some suggest that our industry still has a capacity that exceeds the demand.

If this is true, 2012 will be an important year for firms that wish to survive, and even improve.

Chris Behning is the CEO of Pittsburgh-based STAT Systems, the developer of a cloud-based settlement, title and appraisal technology. He has 30 years of experience with technology and systems development, and over 25 in the real estate services industry. For more information, go to *www.STATSystemsLLC.com*.

Does the Road Map for Your Firm's Growth Lead to San Antonio?

Title professionals can learn from the unique makeup of the nation's seventh largest city as this market has already started to recover.

It is a challenging time for title and settlement services professionals. With origination volume shrinking and REO activity affected by regulatory scrutiny, settlement services executives need to plan shrewdly in order to ensure some consistency in their businesses. For many, that has come to include growing one's service area or geographic footprint. Increasingly, lenders, vendor management companies and even underwriters turn to service providers who can cover multiple markets and larger geographic regions.

When plotting expansion into a new market (or a partnership opening up new markets), there are several obvious factors to consider when determining the viability of such a strategy. Access, barriers to entry and potential business volume are all mainstays in the process (not to mention asking whether or not an existing client has business to offer there). But as we move into 2012, times have changed. Title executives need to be a step ahead in their planning criteria as well. Which markets are ripest for expansion, and how can one be sure they will remain viable for years to come? There is no silver bullet for this determination, but one currently growing market provides a few clues as to what to look for.

San Antonio is a growing city in the growing state of Texas – it's the state's second largest and seventh largest in the nation (2010 U.S. Census). For a number of reasons, San Antonio appears to be recovering from the recession a bit faster than others. Although this is not to suggest that San Antonio thrived throughout the recent recession, it is apparent that the city's bounce back may offer several lessons for the savvy settlement services decision-maker. What is it about San Antonio that has allowed it to return to some level of prosperity a bit faster than others, and what can the title industry take from that?

A Growing Young City

While San Antonio is physically one of the nation's oldest cities, its population is one of the youngest. As of the 2010 U.S. Census, the city's median age was 34.1 years, making it the fourth youngest major city, and fifth youngest Metropolitan Statistical Area (MSA) in the United States.

Like much of Texas, San Antonio has also recently been the destination for an influx of immigrants. With all major indicators suggesting that net migration rates will only increase throughout the United States in the next decade, San Antonio is no exception to the rule. The Federal Reserve Bank of Dallas projects San Antonio will grow from a Hispanic component making up 50 percent (in 2000) of its entire population to 61.1 percent by 2040. In short, more people – and potential homeowners – are coming to this market.

If the bottom line is that San Antonio is growing while it gets younger, what is the takeaway for settlement service planners? As America's largest demographic, the Baby Boomers, begins to gray, a market may open for elder-focused housing (multi-family, rental, reverse mortgages). But for those focused on servicing more traditional products such as home equity and purchase, it means a smaller national market, and more competition. Accordingly, settlement services professionals seeking productive new markets may wish to seek out pockets of younger families growing into their purchase power. Those same decision-makers would want to consider markets buoyed by immigration (although employment numbers would also come into play).

Of course, simply opening up shop in a younger, growing town is no guarantee of instant success. It is clear that the younger generation views homeownership very differently than previous generations did. Not all young professionals seek to purchase a home, or take on a mortgage, any more. Similarly, new Americans from different cultures may not necessarily seek single-family homes, but rather, to share multi-family housing units.

Settlement services providers seeking access to a younger, multi-cultural market will likely need to adapt to fit the needs of those demographics. That might mean flexible closing hours, multi-lingual closing agents and mobile closing capabilities. That could mean using as much modernized technology as possible to create transparency for the borrower. It could also mean being able to service a variety of different loan products. It will definitely mean flexibility and planning.

A City with its Eggs in Multiple Baskets

U.S. Bureau of Labor Statistics lists San Antonio among the top cities in the nation for creation of new retail jobs. And according to the *San Antonio Express News*, the city has reported increased sales tax revenue, job growth and housing permits. Why is San Antonio starting its recovery as others continue to flail?

One reason for this upturn in economic activity is that the San Antonio economy is not dependent on a single industry. At its core, San Antonio boasts strong contributors in four industries: financial services, health care, government and tourism. Even if one or two industries slump, there are other sources of employment and tax revenue. This is in direct contrast to, say, Midwestern markets dependent upon auto manufacturers; or Southwestern markets dependent upon real estate or tourism.

Although economic diversity is not a guarantee that a housing market will bear fruit for a new settlement services firm, it does make for a more stable environment. Unemployment numbers in such communities tend to be more stable, and the populations tend to be a bit more confident in their job security. To be sure, a better economy likely also means more competition in the real estate and mortgage sector, so perhaps partnership is the best way to enter such communities. Nonetheless, the savvy title owner would do well to analyze the source of any new market's prosperity. Boom towns and one-trick ponies can be risky propositions in an economy as fragile as ours has been.

Government Presence and Cooperation

San Antonio is home to four military bases, with two more in close proximity. More than 89,000 jobs can be traced to the federal government there. Indeed, this is a community flush with federal cash, and related economic activity. Most agree that the federal government will remain the national economy's single largest engine for the foreseeable future. It goes without saying that where there are jobs, there is real estate activity. In San Antonio, for example, much of its real estate activity has been focused on relocation. The lesson to be learned therefore is that if one is seeking greener pastures into which to expand, an area with a large federal presence is never a bad bet.

San Antonio is also the epitome of government-business collaboration. For example, The Brooks City-Base, once an Air Force facility, is a powerful economic engine today because of the local government's willingness to work with the federal government and private equity. Faced with the closing of the military base years ago, San Antonio enticed the federal government to hand over the base to private ownership and management. Today, Brooks City-Base is a privately owned science, technology and business center. More importantly, it is an economic anchor for the city.

The benefit of a healthy government presence and attitude for settlement services firms seeking entry to that market is fairly clear. A pro-business approach in any community likely means more business, more jobs and more real estate opportunities. Moreover, it can mean one less compliance headache for title businesses large and small. The lesson applies universally for any business: A local government willing to work with the business community for prosperity is the sign of an appealing market.

San Antonio is not the only city in the United States with lessons to offer. It does, however, provide a great case study for settlement services businesses seeking to expand. With the overall mortgage market shrinking, it will be the creative and thoughtful firms that move forward. If geographic expansion is the route to be taken, these lessons provide food for thought as the due diligence process begins.

Jim Hollerbach is president and CEO of San Antonio-based Hollerbach & Associates, a title research and abstracting firm in business for over 25 years.

For more info, send an email to info@Hollerbach.com.

ALTA Convinces Freddie Mac to Modify Short Sale Affidavit

Through the combined efforts of ALTA, its engaged members and the National Association of Realtors, Freddie Mac made changes to its servicer guide clarifying an affidavit that mortgage servicers force closing and escrow agents to sign when conducting a short sale to reduce fraud.

As a result of the uptick in short sale fraud, last fall Freddie Mac started requiring all of the parties involved in the transaction to sign an affidavit attesting that it is a true arms-length transaction and indemnify Freddie Mac if they suffer a loss because of a negligent or intentional misrepresentation made by the closing agent. The affidavit's language caused significant problems for the title industry.

"We are very pleased that Freddie recognized our members' concerns regarding the short-sale affidavit, and accepted many of the industry's suggestions to make the affidavit less burdensome," said Michelle Korsmo, ALTA's chief executive officer. "By clarifying its guidelines, Freddie Mac removes an unfair liability that was imposed on closing and title agents. It is unreasonable to have a closing agent certify that a transaction is arms-length because in most cases they cannot know if any of the parties are in collusion to flip property."

In its new guidance, Freddie modified the affidavit to include a knowledge standard that requires each certification is made to "the best of each signatory's knowledge and belief." This change addresses ALTA's concern that closing agents were being asked to certify information that they did not and could not know. The new guidance went into effect for short sale transactions taking place on or after Jan. 1, 2012.

Beverly McReynolds, regional president for North American Title Company in Florida, thanked ALTA for its efforts in getting the affidavit modified.

"I cannot express the amount of pressure that has been lifted from our closing offices with the amendment ALTA obtained to

the Freddie Mac Arm's Length Affidavit," she said. "We have been attempting to make the same changes to those affidavits from the time we first saw them. As time passed, the lenders were becoming less and less cooperative and we were walking away from deals that we had worked on for months. Because of ALTA, we can finally go back to work and insure what we are meant to insure."

Freddie Mac also said each signatory will only be responsible for their individual negligent or intentional misrepresentation instead of the certifications of all of the other signatories. With these

Short Sale Affidavit Requirements

Servicers must obtain a short sale affidavit wherein the parties to the transaction attest that the sale constitutes an arms-length transaction. The affidavit is to be executed before or at the time of closing of the sale of the mortgaged premises by all borrower(s), purchaser(s), real estate brokers representing any of the parties, the escrow/closing agent performing the closing of the sale, and the transaction facilitator facilitating the sale (if any) certifying under penalty of perjury that to the best of each signatory's knowledge and belief:

A. The sale of the mortgaged premises is an arms-length transaction, between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise;

B. There are no agreements, understandings or contracts between the parties that the borrower will remain in the mortgaged premises as a tenant or later obtain title or ownership of the mortgaged premises, except to the extent that the borrower is permitted to remain as a tenant on the mortgaged premises for a short term, as is common and customary in the market but no longer than ninety (90) days, in order to facilitate relocation;

C. Neither the borrower(s) nor the purchaser(s) will receive any funds or commissions from the sale of the mortgaged premises. The borrower may receive a payment if it is offered by the servicer, approved by Freddie Mac and reflected on the HUD-1 Settlement Statement;

D. There are no agreements, understandings or contracts relating to the current sale or subsequent sale of the mortgaged premises that have not been disclosed to the servicer;

E. All amounts to be paid to any party, including holders of other liens on the mortgaged premises, in connection with the short payoff transaction have been disclosed to and approved by the servicer and will be reflected on the HUD-1 Settlement Statement;

F. Each signatory understands, agrees and intends that the servicer and Freddie Mac are relying upon the statements made in the affidavit as consideration for the reduction of the payoff amount of the mortgage and agreement to the sale of the mortgaged premises;

G. A signatory who makes a negligent or intentional misrepresentation agrees to indemnify the servicer and Freddie Mac for any and all loss resulting from the misrepresentation including, but not limited to, repayment of the amount of the reduced payoff of the mortgage;

H. The certification will survive the closing of the transaction; and

I. Each signatory understands that a misrepresentation may subject the party making the misrepresentation to civil and/or criminal liability.

The affidavit must contain the name of the servicer, servicer loan number for the subject mortgage, the mailing address of the mortgaged premises and the date the sales contract that is the subject of the short sale was ratified by the parties.

All signatures to the affidavit must be notarized and dated. The affidavit must contain the printed name and signature of each signatory. The signature of a real estate agent or settlement agent signing in a representative capacity for the brokerage or settlement service provider is acceptable so long as the representative capacity is clearly identified. The servicer may modify and integrate its own requirements into the affidavit form so long as the minimum requirements contained in this section are present. The short sale affidavit must be a separately identifiable document, distinct from other closing or pre-closing documents, such as the sales contract.

changes, Freddie has eliminated ALTA's concern that closing agents would be jointly liable for another signatory's false certification. Lastly, while Freddie Mac still requires all signatories to sign a single affidavit, the affidavit can no longer be incorporated as an addendum to the sales contract.

"Changes to Freddie Mac's Servicing Agreement were possible because ALTA members were quick to tell ALTA staff of their concerns with the affidavit and ALTA staff created a strategy to address this issue with FHFA and Freddie Mac, the National Association of Realtors and Mortgage Bankers Association," Korsmo said. "Steve Gottheim, ALTA's regulatory and legislative counsel, was active in coordinating advocacy with our members. It's through this active participation of ALTA members, that positive results can be achieved to protect the industry and consumers."

The affidavit was designed to protect Freddie Mac when the buyer, seller, real estate brokers, escrow/closing agent, and any transaction facilitator were involved in short sale fraud by making various certifications and indemnifications.

"Like Freddie Mac, ALTA has zero tolerance for fraud. Under existing practices, closing agents already take on the duty of disclosing known or suspected fraud in appropriate circumstances," Korsmo said. "These duties provide protection for Freddie Mac to ensure that the closing agent will report known fraud to the servicer. ALTA believes industry standards and best practices should be developed as industry partners work together to combat mortgage fraud."

"By clarifying its guidelines, Freddie Mac removes an unfair liability that was imposed on closing and title agents. It is unreasonable to have a closing agent certify that a transaction is arms-length."

The affidavit still includes a requirement that a signatory indemnify the servicer and Freddie Mac for losses if they made "a negligent or intentional misrepresentation." ALTA believes the addition of the knowledge standard should significantly reduce this liability, but is aware that the indemnification may still cause problems for title companies and closing agents.

Each servicer doing business with Freddie Mac must update its forms to comply with the revised policy. ALTA encourages members to ensure they are signing an updated form. If title companies are presented with an old form they can request that the servicer update the form, using the new guidance as a reference or ask to make modifications to the form to structure your liability. If you encounter servicers who are unaware of the guide changes or are reticent to update their forms to comply with these changes, contact Steve Gottheim at *sgottheim@alta.org*.

Other Changes

Freddie Mac also provided additional guidance with respect to short payoff requirements. Specifically, Freddie Mac said that short sale negotiation fees must not be deducted from the proceeds of the sale or charged to the borrower. It also clarified that all amounts paid to any party in connection with the short payoff transaction, including payments made to holders of other liens on the mortgaged premises, must be accurately reflected on the HUD-1 Settlement Statement and the amount and recipient of the payments must be clearly identified. Freddie Mac allows a borrower to receive a payment upon the sale of the mortgaged premises only if the payment is offered by the servicer, approved by Freddie Mac, and reflected on the HUD-1 Settlement Statement.

Among other changes, Freddie Mac eliminated the requirement that a borrower must have had the mortgaged premises listed for sale in order to be eligible for a deed-in-lieu of foreclosure (DIL) for mortgages that are 120 days or more delinquent.

Former ALTA Executive Vice President Celebrates 90th Birthday

William McAuliffe Jr., who served as executive vice president of the American Land Title Association from 1965-1984, celebrated his 90th birthday Jan. 18.

He served as senior vice president until 1988. McAuliffe returned to ALTA in 2002 to work on the association's Title Insurance Regulatory Survey, which contains laws, regulations and customs of the title insurance industry in every state and the District of Columbia. He continues to serve as a historian and advisor to ALTA staff. Besides being an honorary member of ALTA, he's an honorary member of the Michigan, Pennsylvania and New Jersey state land title associations.

"ALTA has always been very fortunate for its member involvement in association activities," McAuliffe said. "I thoroughly enjoyed working with members of the Executive Committee, the Board of Governors and committees. Many of them were my very good friends."

During McAuliffe's time with ALTA, the association dealt with many of the same issues it faces today, including accusations that title insurance costs are too high. In 1969, former Sen. William Proxmire (D-Wis.) requested a study on title insurance premiums "to protect homebuyers against unreasonably high closing costs." The request was denied. Another issue was the lack of understanding of title insurance.

"Bill is a wealth of knowledge and we are fortunate to have him still offer his time for the betterment of ALTA and the industry," said Michelle Korsmo, ALTA chief executive officer. "Bill is a genuine and compassionate person who has been an ambassador of the title industry for many years, which can be reflected by the fact that he is an honorary member of not only ALTA, but three state land title associations."

McAuliffe noted the federal government has become increasingly involved in attempting to regulate the industry.

"Before we were more focused with regulation from the state insurance commissioners, now, the industry must contend with more and more federal regulations as well," he said.

Some notable highlights during McAuliffe's tenure as executive vice president of ALTA include:

- 1973: ALTA created TIPAC, receiving about $40,000 in contributions its first year.
- 1979: ALTA held its first seminar for the NAIC in Salt Lake City.
- 1980: ALTA's education program took a giant step forward when Hart McKillop, an ALTA honorary member, donated his Land Title Institute to the ALTA.

Prior to joining ALTA, McAuliffe was an attorney for the American Medical Association in Chicago, served as chairman of the Planning Commission of the village of Skokie, Ill., and rewrote zoning laws for the village. After graduating from Harvard University, he obtained a bachelor of law degree from Boston College Law School and a master of laws degree from Georgetown Law School. McAuliffe and his wife, Kee, celebrated their 60th wedding anniversary last year.

Title Company Sues Bank After Cyber Attack Results in $200K Loss

A Virginia-based title company filed a lawsuit against a bank over three unauthorized wires that resulted in a loss of more than $200,000.

In its lawsuit filed in the Circuit Court for Fairfax County, Global Title Services alleged a Zeua Trojan virus infected its computer system, giving the fraudsters access to the company's network and online banking passwords at then-Chevy Chase Bank (which was later acquired by Capital One).

On June 1, 2010, the thieves sent a series of unauthorized wire transfers to money mules, who relayed the funds to accounts in Russia.

According to the lawsuit, Global Title unsuccessfully attempted to log on to Capital One's online system in order to send out additional wire transfers. Concerned about the inability to access the online banking system, Global Title President Priya Aurora immediately contacted Capital One to seek their assistance. The bank informed Aurora the account was not accessible due to a routine security update that Capital One was performing.

Despite informing the bank that she was the only person with access to the online banking system, Aurora said Capital One dismissed her concerns.

While Capital One attempted to reset the security password, Global Title was still unable to access the online banking system. It took nine more days until Global Title was able to gain access to its online banking system.

During that time, a total of 18 unauthorized transfers worth more than $2 million were made. The bank managed to reverse all but the first three transfers of more than $200,000. The title company is accusing the bank of failing to act in good faith and arguing that by not employing two-factor authentication it failed to implement commercially reasonable security procedures for its online banking clients.

"By operating a single factor identification online banking system, Capital One lefts its customers open to identity theft and failed to take sufficient safeguards to prevent unauthorized access to its client's online banking accounts, including the ability to send wire transfers," Global Title said in the complaint.

Global Title is asking the court for a $500,000 judgment, plus pre- and post-judgment interest and attorney's fees. The case is scheduled to go to trial on April 10 unless the parties reach a settlement.

Capital One issued the following statement about its fraud controls: "Capital One's authentication controls protecting our commercial platforms are compliant with the federal multifactor authentication guidance. These controls are the subject of annual risk assessments to ensure they remain appropriate in light of the threat environment. In the funds transfer realm, among the controls utilized are hard tokens and out-of-band confirmation of payment instructions. "As part of our broader security measures, Capital One provides security – and safe computing – related 'best practice' tips and recommendations to let our small business and commercial clients know what they can do to protect themselves and reduce their fraud risk."

Banks in the United States are supposed to adhere to online banking authentication guidance issued in 2005 by regulators at the Federal Financial Institutions Examination Council (FFIEC), but many institutions have been slow to comply with the guidelines. Lawsuits ruling on bank responsibility for ACH wire fraud committed against customers have been mixed.

In June 2011, a Michigan court held Comerica Bank liable for more than $500,000 stolen in a 2009 cyber heist. Two months later, a district court judge in Maine ruled that banks which protect accounts with little more than passwords and secret questions are in compliance with security guidance.

The Zeus botnet is hard to detect even with virus or malware systems on your computer. Agents are reminded to take the time to analyze computer security and internal procedures. To help members safeguard sensitive customer and company information, ALTA's Technology Committee has developed the Office Security and Privacy Guidelines, which is available to members on ALTA's website (*www.alta.org*).

Stewart Title's Florida Underwriting Counsel Honored by FLTA

Barry Scholnik, vice president and Florida underwriting counsel of Stewart Title Guaranty Co., was recently honored with the Raymond O. Denham award for his work in the Florida Land Title Association (FLTA). The award is given each year to an FLTA member who has rendered the highest degree of service and support to the organization.

"We congratulate Barry on his outstanding work with the FLTA," said Mark Johnson, vice president and southeast regional underwriting counsel of Stewart Title Guaranty Company. "His work with the FLTA is very important, as it not only promotes and protects the title industry, but also shows Stewart to be a leader in supporting these efforts. All of Stewart joins me in congratulating him on this outstanding accomplishment."

Scholnik began working at Stewart in 1995 and has worked in the title insurance industry since 1982. He currently serves as a member of the FLTA's Governmental and Judicial Affairs Committee and has previously served the FLTA as president and chairman of the Insurer's Section.

Data Examines Average Down Payments

New Jersey leads the nation with the highest average down payment, while Midwest states rank at the bottom of the list, according to LendingTree.

With the housing market continuing to struggle and fewer consumers being able to purchase a new home or apartment, LendingTree.com released data highlighting the average down payments on residential real estate purchases for all 50 states and Washington, D.C.

New Jersey leads the country with the highest average down payment of 13.76 percent. The state with the lowest average down payment is North Dakota, where buyers put down an average of 11.37 percent.

The locations rounding out the Top Five for highest down payments including Washington, D.C. (13.54 percent), New York (13.51 percent), Hawaii (13.37 percent) and California (13.25 percent). The states completing the bottom five are Wyoming (11.42 percent), Oklahoma (11.67 percent), Utah (11.75 percent) and Tennessee (11.75 percent). Overall, the average down payment for all states is 12.29 percent.

First American Settles Claims Suit With Bank of America, Fiserv

First American Financial settled a lawsuit with Bank of America and Fiserv Solutions in December for allegedly failing to pay or failed to timely respond to certain claims made on title insurance policies issued in connection with home equity loans or lines of credit now in default.

According to a filing with the Securities and Exchange Commission, First American took a third-quarter charge of $13 million in connection with the lawsuit and plans to take an additional charge of $19.2 million in the fourth quarter in connection with the settlement.

In a March 2010 complaint, Bank of America alleged it sustained more than $235 million in losses with respect to denied claims and more than $300 million in losses with respect to claims with untimely responses. According to the complaint, the title insurance policies, which did not require a title search, were intended to protect against the risks of certain defects in the title to real property, including undisclosed intervening liens, vesting problems and legal description errors, that would have been discovered if a full title search had been conducted.

According to the complaint, First American and its subsidiary, United General Title Insurance Co., entered into an agreement with Fiserv, appointing Fiserv as the agent of the insurers in connection with insurance policies issued by United General and First American to lenders that participated in Fiserv's QuickClose Lien Protection Insurance Program, including policies issued to Bank of America. The complaint also indicated Bank of America was required to satisfy certain criteria before title would be insured.

new members

ALABAMA
Craig Paulus
Paulus Title, LLC
Huntsville

Thomas Crawford
The Title Group, Incorporated
Birmingham

CALIFORNIA
Giancarlo Spolidoro
Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP
Los Angeles

Karen Ahearn
Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP
Los Angeles

Austin Garner
Smith Dollar PC
Santa Rosa

CONNECTICUT
Dennis S Jackson
Dennis S. Jackson, LLC
Waterbury

Jennifer Zettergren
Dzialo, Pickett & Allen
Middletown

Gina M. Sullivan
Clinton

Paul Jessell
Slavin, Stauffacher & Scott, LLC
Watertown

Robert G. Walker
Westport

FLORIDA
Edward A. Kerben
Orlando

Jonathan Bloom
Law Offices of Jonathan Bloom, P.A.
Boca Raton

Eric Solomon
Legacy Foundation Group Title & Escrow
Naples

Carol Eubanks
Partnership Title Company of Alabama, LLC
Pensacola

Helen Mittelman
Sonn & Mittelman, P.A.
Aventura

Reinhard G. Stephan
Altamonte Springs

FLORIDA CONT.
Cristina Planas
The Title Connection
Miami Lakes

Theodore Jay Hamilton
Wetherington Hamilton & Harrison, P.A.
Tampa

Robert Peacock
Zimmerman, Kiser & Sutcliffe, P.A.
Orlando

GEORGIA
F. Lee Perkins, P.C.
Cartersville

John Haley
Haley & Haley Law Group, LLC
Buford

Lawrence O'Neal
O'Neal, Long & Hall, Attorneys at Law
Warner Robins

Terry Lee Wilson LLC
Blue Ridge

ILLINOIS
George Hupp
Buchner & O'Toole Title Co., LLC
Ottawa

Geoffrey Polk
Presidential Title LLC
Chicago

INDIANA
Mark Jones
Lett & Jones
Loogootee

IOWA
Sarah J. Hendricks
1st Choice Companies, LLC
West Des Moines

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MASSACHUSETTS
Gregory J. Condon
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Steven Bloom
Cushner & Bloom, P.C.
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Law Offices of Mark R. Draymore, LLC
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Brian Pacheco
Somerset

Shawn P. Reilly
Abington

R. Craig Reynolds
Reynolds Law Offices
South Lancaster

Judith Clark
Sullivan & Clark
Melrose

Joseph P. Sullivan
Newburyport

MICHIGAN
Candy Adams
Interstate Title, Inc.
Livonia

MINNESOTA
Paul Sween
Adams, Rizzi & Sween, P.A.
Austin

Trisha Erdmann
On-Site Title, LLC
Big Lake

US Bank Home Mortgage
Bloomington

Michele Whalen
Wantaclear Title LLC
New Brighton

NEBRASKA
Stanley Welte
Midwest Title Company
Tekamah

NEW JERSEY
John Magic
Flood Zone Certification
Westwood

Anthony Chiellino
Prestige New Jersey Title Agency, Inc.
Shrewsbury

NEW YORK
First Westchester Title Agency & Settlement Co., LLC
Tarrytown

Robert Arnold
Onondaga Abstract, Inc.
Liverpool

new members

OHIO
Tany Lord
First Nation's Title Agency, LLC
Brecksville

Guardian Title & Guaranty Agency, Inc.
Middleburg Heights

Michael S. Pfeffer
Ohio Valley Title Agency
Ripley

Dennis O'Brien
The O'Brien Law Firm Co. LPA
Independence

PENNSYLVANIA
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Plymouth Group LLC
Allentown

Rachel D. Stufft
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Heritage Title Insurance Agency, Inc.
Summerville

Shannon M Lando
Lando Law Firm, LLC
Indian Land

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R H. Humphreys
Glankler Brown, PLLC
Memphis

UTAH
Spring Johnson
Sun West Title Insurance Agency, Inc
St. George

VIRGINIA
Henry Carter
Germanna Title Company
Orange

Michael McFarlane
Highland Title & Escrow, LLC
Ashburn

Robyn Schmidle
Prof Settlements of Northern Virginia, Inc.
Fairfax

Kelly J Pogorelec
Title Alliance Greenbrier, LLC
Chesapeake

TIPAC Completes Record-Setting 2011, Sets Goals for New Year

We've come a long way since ALTA created its Political Action Committee in 1973. In its first three years, TIPAC received about $40,000 in contributions, which went to candidates running for federal office in 1976.

I'm proud to announce that in 2011, ALTA once again surpassed its TIPAC goals, and set a new record for number of contributors and dollars raised. While final numbers are not available, as of Christmas, 633 title professionals have given more than $318,000. This follows the successful campaign TIPAC enjoyed in 2010 when it received about $259,000.

Needless to say, spirits were high during the final conference call of the year for the TIPAC trustees. I would like to thank the committee for their tireless efforts.

I'd also like to thank all of those who continue to support the title industry's PAC, companies that led donation campaigns, event sponsors, and state land title associations for donating to the TIPAC education fund.

There are many moving pieces that will ultimately reshape the mortgage market and how we do business. More importantly, 2012 is an election year, which could once again change the landscape on Capitol Hill.

The coming year will prove pivotal, and that's why TIPAC's trustees once again are committed to raising $300,000, while increasing the number of contributors to more than 750, and hopefully to 1,000 by 2014.

TIPAC may only solicit contributions from the executive and administrative personnel, stockholders, and family members of these groups who have given TIPAC prior approval to solicit. Corporate approval is necessary before TIPAC can conduct a solicitation.

If you have any questions or want more information about TIPAC, please contact Jessica McEwen, ALTA's director of government affairs, at *jessica@alta.org*.

I hope you enjoyed the holidays and wish everyone a healthy and successful 2012.

– John Voso Jr., TIPAC chair