

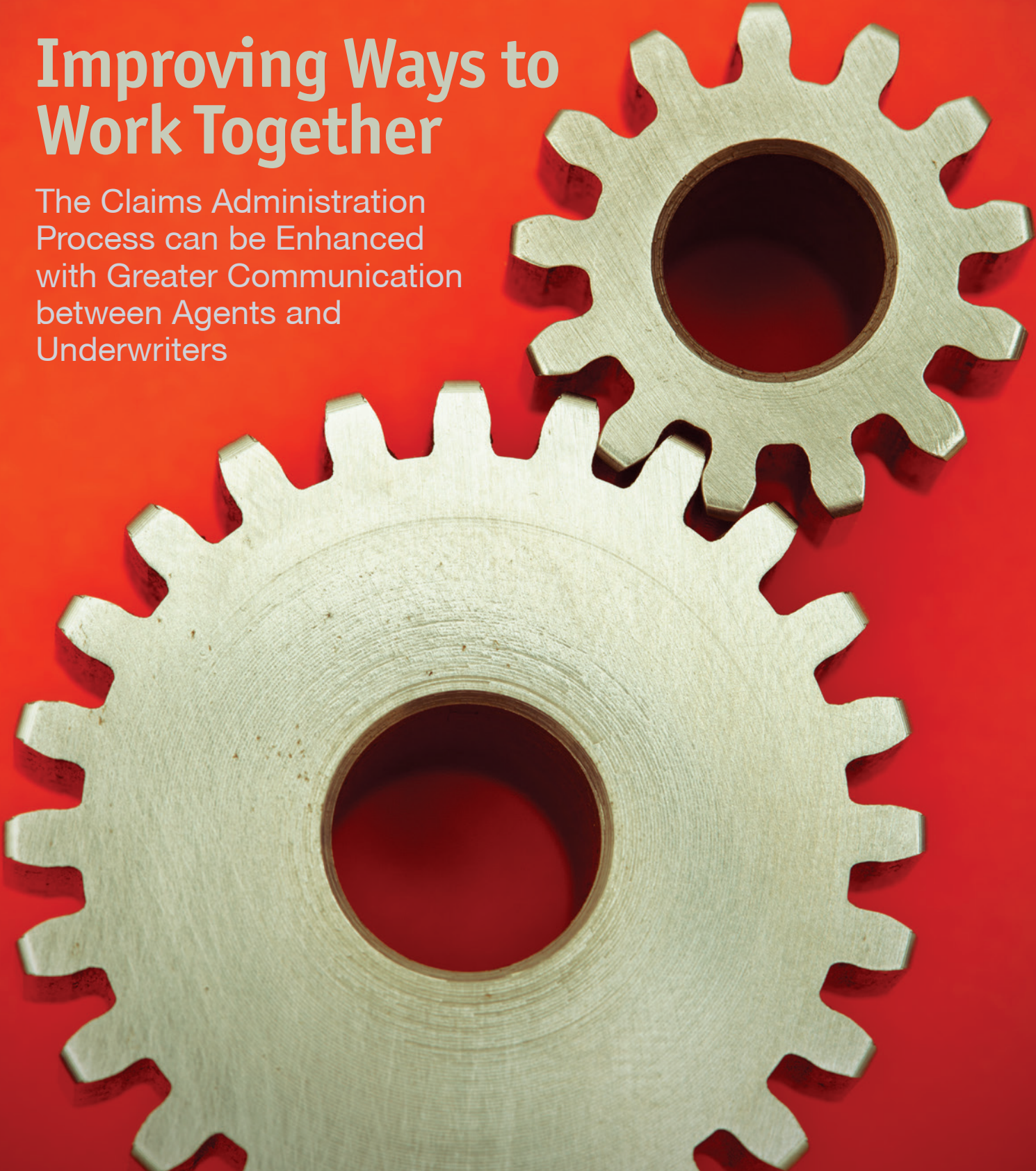
March 2012

Official Publication of the  
American Land Title Association

# TitleNews

## Improving Ways to Work Together

The Claims Administration  
Process can be Enhanced  
with Greater Communication  
between Agents and  
Underwriters





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March 25	Agents & Abstracters Forum Louisville, KY
March 25 - 27	2012 Business Strategies Conference Louisville, KY
April 23	Agents & Abstracters Forum Dallas, TX
May 6 - 9	2012 Federal Conference and Lobby Day Washington, DC
May 20	Agents & Abstracters Forum Minneapolis, MN
September 23	Agents & Abstracters Forum Richmond, VA
October 17 - 20	2012 Annual Convention Colorado Springs, CO

## STATE MEETINGS

April 19 - 20	Alaska
April 19 - 21	Oklahoma
May 6 - 8	Iowa
May 14 - 16	California
June 6 - 7	South Dakota
June 7 - 9	Virginia
June 10 - 12	Pennsylvania
June 10 - 12	Wyoming
June 14 - 16	Texas
June 21 - 24	New England (CT, ME, MA, NH, RI, VT)
July 15 - 17	Michigan
August 1 - 4	Kansas
August 9 - 11	Pacific Northwest (ID, MT, OR, UT, WA)
August 10 - 11	Minnesota
September 9 - 12	New York

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from the publisher's desk

## Building a Culture of Trust Benefits Entire Industry

Obviously, nobody wants a claim made on a policy they issued. In a perfect world, there would be no claims. Unfortunately, mistakes happen and things get missed. When a claim is made, it is the industry's responsibility to resolve issues as efficiently as possible and settle valid claims. As claims have mounted over the past few years, tensions have increased between agents and underwriters, which one would expect in a troubled market.

To help facilitate the claims discussion and build trust between agents and underwriters, representatives from five underwriters participated on a panel discussing the claims administration process in January during our Title Agents Executive Conference in California.

It was a captivating conversation as Diane Calloway of Specialized Title Services did a fantastic job moderating while the agents attending the meeting peppered the underwriter representatives with questions on how claims are handled. Everyone appreciated the exchange of information as agents and underwriters were able to hear each others' perspective. I'd like to thank Mark Borst of Stewart, Scott Chandler of Westcor, Michele Green of First American, Elaine Layton of Old Republic and Joe Reinhardt of Fidelity, as well as the agents, for participating in the discussion and opening the lines of communication.

We reached out to the underwriter claims representatives to expand on the conversation by offering their thoughts for our cover article, which can be found on page 10. In talking with both sides, it's easy to see that agents and underwriters agree that good communication is essential to a strong claims administration process. Beyond communicating, the two sides need to develop a culture of trust. Without trust, the best strategic plans will not work. I encourage you to read the cover article as you consider building better industry relationships and strive to reduce claims.

Also, on page 17, we share a story about how settlement agents and title insurers can help in thwarting fraudulent transactions – which ultimately turn into claims. The article offers tips on spotting potential fraud and also shares an example of how a title officer saved a servicer more than \$2 million by stopping two fraudulent deals from closing.

We will continue the claims discussion at this year's Business Strategies Conference, which will be held March 25-27 in Louisville. One of our professional development sessions will discuss how claims affect an agency's standing with its underwriter. Claims can also have a major impact on an agent's reputation as a quality business and influence customers' decisions on where to send their next big deal. The session will focus on techniques and tools that can be employed to improve your claims ratio and ultimately maintain your reputation and profitability. There's still time to register for the conference at [www.alta.org/meetings/businessstrategies](http://www.alta.org/meetings/businessstrategies).

We look forward to continuing the conversation in Louisville.



- Michelle Korsmo, ALTA chief executive officer



Katie Andrews  
Florida Agency Operations



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Yes, we have the largest investment portfolio in the industry. And yes, our reserve for claim losses is more than the next three largest title insurers combined. But, it's the strength, expertise, and service of our people that really makes the difference.

If you know our people, you know they set us apart from the rest of the competition. If you don't know them, you should. Get to know our people and experience the difference they make. Get to know Fidelity National Title Group.

## Deadline for New HUD-1 Rules Nears; ALTA Asks for Opportunity to Review

ALTA and 11 other associations urged the Consumer Financial Protection Bureau (CFPB) to adopt an expanded rulemaking process as it works to develop simplified mortgage disclosure forms, including a new HUD-1.

The CFPB released its final round of new closing disclosure prototypes last month. It must publish proposed new forms and regulations by July 21, 2012. In a letter to Richard Cordray, director of the CFPB, ALTA said the accompanying rules that will govern the use and application of the disclosure forms are as important as the content of the forms.

"The rules will govern the timing and reliability of the forms and provide remedies for misdisclosure," ALTA said in the letter. "Notwithstanding, no input on these rules has been invited. For this reason and to ensure a more workable proposal, we encourage

you to use a similarly open and interactive process to arrive at the accompanying rules."

ALTA has asked the Bureau to adopt an iterative rulemaking process in advance of the July 21 deadline by publishing an outline of potential underlying rules to accompany the disclosures and seeking written comment from the public on the content of the outline. It should then provide opportunities for input as the outline is revised leading up to the proposed rule.

"Implementation of the new forms will be the biggest hurdle and the industry will need many opportunities to warn the Bureau of potential troublesome aspects of the regulations before they propose the rule in July," said Justin Ailes, ALTA's vice president of government affairs.

Before the rule is proposed, ALTA encouraged the CFPB to test its prototypes or draft disclosure forms on



Consumer Financial  
Protection Bureau

actual closed loans for a range of loan products and for a range of local real estate practices. This would reveal whether or not the forms are achieving their goal of increasing transparency and reducing consumer confusion.

"Early testing of this nature would prevent the possibility that after the rule is final, certain loan products will become unavailable because the forms and rules do not accommodate them or other potentially serious problems that could arise as a result of the diverse settlement practices found around the country," the letter said.

ALTA encourages members to inform the CFPB on the impact these changes will have on business and the ability to explain closing

costs to consumers. You can email the CFPB at [KnowBeforeYouOwe@cfpb.gov](mailto:KnowBeforeYouOwe@cfpb.gov).

Members also should consider forwarding any cost estimates for implementation (both internal and from software providers) to the Bureau so they can understand the potential costs of different proposed changes to the HUD-1. Some other questions to consider are:

- *Do you like the way these forms deal with line numbers?*
- *Do you use line numbers to help explain costs to customers?*
- *Do you prefer these forms to the current HUD-1? Why?*
- *Will these forms create any problems for you when explaining information to consumers?*

## ALTA Files Brief in U.S. Supreme Court RESPA Case Addressing Split Fees

ALTA, along with other trade associations, filed an amicus brief requesting the U.S. Supreme Court affirm a lower court's ruling that undivided unearned fees are not kickbacks and not a violation of the Real Estate Settlement Procedures Act (RESPA).

The U.S. Supreme Court heard oral arguments Feb. 21 in the case *Freeman v. Quicken Loans, Inc.* to decide whether Section 8(b) of RESPA prohibits a settlement services provider from only charging an unearned fee when the fee is divided between two or more parties.

The U.S. Court of Appeals for the Fifth Circuit held that RESPA prohibits only kickbacks and referral fees, not unearned fees by a sole provider of settlement services. Therefore, charges that Quicken imposed on the appellants for loan discount fees and a loan processing fee are not prohibited by Section 8(b) of RESPA.

This court's decision will have implications on Section 8(b) and the dividing/splitting of

settlement fees. While HUD's position has been that unearned fees are prohibited by RESPA regardless of whether or not they are split with another party, appeals courts have concluded RESPA does not regulate overcharges or price increases.

The plaintiffs allege Quicken Loans charged discount/origination fees that were unearned and therefore illegal. In addition, the plaintiffs alleged that Title Source charged an appraisal fee that was either split with Quicken Loans, unearned and/or duplicative, and/or excessive in relation to the services rendered.

Quicken and Title Source argued in a motion for summary judgment that the fees were not split with another party and, as a consequence, no RESPA violation was possible whether or not these fees were unearned. They argued that the loan discount fees were paid to and retained solely by Quicken Loans, while the appraisal fees were paid to and retained by Title Source.

In the brief, ALTA writes that the statutory text of

Section 8(b) or the overall purpose of RESPA was never intended to be a panacea for "all perceived pricing ills."

"Rather, RESPA was intended to increase the disclosure consumers received and to prohibit certain limited abusive practices — namely kickbacks and fee splitting

where no services were performed. Congress realized that price regulation and caps bore their own set of problems, which is illustrated by application of petitioners' view and HUD's position on section 8(b)," the brief states.

## ALTA Files Brief in Massachusetts Foreclosure Case

ALTA has filed an amicus brief with the Massachusetts Supreme Judicial Court in the case *Eaton v. Federal National Mortgage Association*.

The court is considering whether a foreclosing lender must possess both the promissory note and the mortgage in order to foreclose.

A ruling that foreclosing lenders must produce both the note and mortgage held by the same entity would drastically alter existing foreclosure practice in Massachusetts. It also may open existing foreclosures to legal challenge. In its brief, ALTA wrote that if the court finds that a valid foreclosure requires a unity of the mortgage and underlying

note, this finding should be prospectively applied. This would provide homeowners and lenders a reasonable opportunity to comply with a holding that runs counter to laws and conveyance practices that have been followed and relied upon for more than 100 years.

"Retroactive application will create chaos in the conveyancing world and cloud titles to all homes with a foreclosure in the chain of title," the brief said. "It will not only affect the marketability of title but will also pose a significant threat to the real estate and insurance bars, title insurance industry, as well as the market for secondary mortgages."



## MISMO Title Workgroup Elects Leadership During Workgroup

The Mortgage Industry Standards Maintenance Organization (MISMO) Title Workgroup met during the MISMO Trimester Workgroup meetings Jan. 23-27 in Jacksonville, Fla., along with 12 other workgroups and 116 attendees focusing on data standards for the mortgage finance industry.

The Title Workgroup

elects leadership for the coming year, including co-chairs Charlie Epperson of SigniaDocs and Mark Kleingers of eLynx. The workgroup reviewed the recently released MISMO Version 3.2 XML standard, which was in public comment until Feb. 20, and found just one minor correction to report.

The Implementation Guides for eRemittance

(standardizing remittance information between agent and underwriter) and eAgentValidation (standardizing agent validation information between lender and underwriter) standards were completed during the working meeting. They will remain in draft form pending final publication of MISMO Version 3.2 and will be updated as

additional publication guidance for uniform MISMO Implementation Guides becomes available. Both were developed by the ALTA Technology Committee and Underwriter Section Executive Committee in conjunction with MISMO.

Questions may be directed to staff liaison Kelly Romeo at [kromeo@alta.org](mailto:kromeo@alta.org).

## Provision of Dodd-Frank Would Limit Liquidity in Residential, Commercial Markets

ALTA joined 22 associations urging elimination of a Dodd-Frank Act provision in order to ensure capital remains available for residential and commercial transactions. In a letter to regulators, ALTA said the proposed Premium Cash Capture Reserve Accounts (PCCRA) would curtail the issuance of both residential mortgage-backed securities (RMBS) and commercial mortgage-backed securities (CMBS).

"The PCCRA will fundamentally alter the economics of the RMBS and CMBS business models and effectively eliminate the incentives for securitization," the letter stated.

It's believed the PCCRA would severely restrict efforts to increase private capital to the residential and commercial real estate markets, resulting in less credit availability and fewer transactions.

These PCCRA concerns were echoed in a special report by Moody's Analytics: "As a result of the way the premium capture rule is stated, the mortgage rate impact to borrowers would be significant— on the order of an increase of 1 to 4 percentage points depending on the parameters of the mortgages being originated and the discount rates applied."

## Join ALTA on Capitol Hill and Protect Your Future

Members of Congress are making decisions in D.C. that impact your industry, customers and your business. That's why it's vital for the title insurance industry to speak with one voice about the role we play in the real estate process.

The title industry will once again have an opportunity to share its concerns during ALTA's 2012 Federal Conference and Lobby Day, which is being held May 6-9 in Washington, D.C.

At last year's Lobby Day, we met with half of the members of Congress. ALTA hopes to have an even larger impact this year. ALTA staff will schedule these important face-to-face

visits and provide an easy-to-understand policy briefing on how to conduct successful visits with your Congressional representatives during the Lobby Day.

"With Congress tackling many issues that will impact the industry, now is the time to unite and protect your livelihood," said Justin Ailes, ALTA's vice president of government affairs. "You have a duty to yourself and to your business to join hundreds of your peers to share our industry's value and how we protect home owners."

To register online, download the registration form or view the tentative schedule, go to [www.alta.org/meetings/federal](http://www.alta.org/meetings/federal).

# Improving Ways to Work Together

The Claims Administration Process  
can be Enhanced with Greater  
Communication between Agents  
and Underwriters

**I**n the past, agents' experience with claims was that the underwriter would take care of smaller claims without seeking compensation from the agent down the road. Agents believe this philosophy has changed, thinking underwriters are looking to agents for every claim.

This may be due to the fact that claims have increased from \$703 million in 2006 to \$1.07 billion in 2010. While full-year numbers aren't available, claims paid were expected to top \$1 billion in 2011 as well. Meanwhile, title premiums have fallen more than 40 percent the past five years. >>

By Jeremy Yohe



“During the boom years of the previous decade, the underwriters were more able to just pay claims and not really worry about it,” said Andy Maloney, president of Tennessee-based Nashville Title Insurance Corp. “Since the downturn, the underwriters have to look out for their stockholders and their bottom line to keep profitability. Unfortunately for the agent, the hammer falls more on them now.”

Fear has spawned in the agent community that they will be dropped by their underwriter for having a claim. Maloney said underwriters are looking to cut expenses and trim any fat possible. “If they can find an excuse, claims is the perfect vehicle,” he said. Agreeing, Diane Calloway, president of Specialized Title Services Inc. in Georgia, said there’s been a sea change that wasn’t discussed or announced.

“It used to be that if you were a good agent – diligent, well trained and followed good practices – most of your claims would be picked up by the underwriter without question,” she said. “They would have assumed you did your best and were remitting. You did not expect to see a claim come back to haunt you.”

Tim Pearson, president of North Dakota Guaranty and Title Co., sees this fear ringing truer for mid-size and smaller agents, adding that the size of the claim also has an impact.

This leads to agents attempting to resolve issues themselves. Maloney estimates agents resolve 90 to 95 percent of the issues before they become claims reported to the underwriter. He said agents pay for things all the time that could become “claims,” such as unpaid taxes, titling issues, missed liens, etc.

“If the underwriter is involved, the problem is one of the following: it is a major issue, the agent has ignored it or the agent has never had a chance to correct it,” Maloney said.

Now, Calloway said, agents are paying to cure defects while trying to keep their operation running.

“I strive for a claims-free environment, but now there’s some junk work out there that we are working behind and it can trip you up more easily,” she said.

■ “ I strive for a claims-free environment, but now there’s some junk work out there we are working behind and it can trip you up more easily.”

While all the underwriters said their claims handling philosophy hasn’t changed over the past several years, the one thing that has changed is the volume of claims.

With underwriters handling more claims, there may be the perception of a changed philosophy. To handle the volume increase, Mark Borst, vice president and regional claims counsel for Stewart, said the company moved from in-house counsel that would handle multiple duties, such as claims and underwriting or claims and agency services, “to a system of claims counsels and claims representatives that exclusively handle claims.”

### Re-evaluating Agents

It only makes good business sense that underwriters have a policy on

dropping agents who have a pattern of claims. Each has a varying degree for claims tolerance.

Stewart Title Guaranty Co. constantly monitors its agency network for situations that may pose additional risk, according to Borst.

“An agent’s claims history is one factor that may be considered when determining if Stewart is going to continue its relationship with an agent,” he said.

According to Margery Lee,

executive vice president and national claims and litigation manager for North American Title Insurance Co., her company’s standard issuing agent contract provides for termination for cause when claims incurred during any calendar year exceed 50 percent of the agent’s net remittances from the previous calendar year.

WFG National Title Insurance Co. also reviews all aspects of its relationship with an agent, not just claims, according to Jeffrey Dondanville, senior vice president and national claims manager for WFG.

“If there is a pattern, then perhaps the agent’s process needs improvement,” he said. “If there is fraud, we have a policy of vigorous prosecution.”

In general, the top three sources of claims continue to be fraud/forgery, search/exam errors and closing errors. In the past two years, depending on the region, underwriters report an increase in claims due to mechanics liens, missing/incorrect legal descriptions, vesting errors and unreleased prior lines of credits brought by lenders seeking to foreclose, as well as lawsuits initiated by delinquent or foreclosed-out homeowners against lenders for predatory lending practices.

“Although the title company or settlement agent has no involvement in the loan origination process, unfortunately it is often named in these lawsuits,” Lee said.

### Lines of Communication

If there is a claim, the consensus is that there needs to be appropriate communication between the agent and underwriter. Agents believe a phone call never hurts, especially before sending an initial claim letter. Some agents said they receive a letter when a claim is made and request their file. The next communication received is a demand for reimbursement. Calloway said the initial contact regarding a claim should merit a phone call, rather than a letter or email.

“Regrettably, some important emails can be missed when the floodgates are open, so I wouldn’t recommend informing an agent by email,” she said. “There should be some meaningful communication. Communication should come first, not last.”

Maloney said his underwriter does a great job of keeping him informed. “As a matter of fact, they email or call me directly when a claim file is

opened,” he said. “They follow up and assist me in satisfying the claim.”

Claims administration may vary by underwriter, but seems to follow the same general process. Once a claim is received, the underwriter will route it to the appropriate claims center or designated representative and begin an investigation to determine coverage. As part of the investigation, the underwriters say they contact the agent by phone or through email to inform them of the claim and request relevant information or documents.

“In many cases, the agent can mitigate or resolve the claim early in the process,” Dondanville said. “The agent may also recommend local counsel to assist in the resolution, or, many times, even resolve the matter themselves.”

Borst concurred that the greatest assistance the agent can provide to the claims counsel is communication and information.

“Prompt, open and frank discussions and exchanges of information between the agent and the claims counsel administering the claim will lead to a quicker resolution for the insured, and an understanding and insight between the agent and the claims counsel into the other’s world,” he said. “A quick response from an agent to a claim notice and providing supporting documentation from the agent’s file benefits all parties.”

### Agent Involvement

The agent community believes their local connection and knowledge of the transaction can help mitigate losses and resolve claims quicker. Agents get frustrated when they feel their underwriter doesn’t listen to their thoughts on claim validity and payment.

“Say there’s a fence problem and the homeowner goes to my church,” Calloway said. “I can get a boundary line agreement and prevent a claim.”

With regional claims handling, many times claims counsel may not be familiar with local customs. One agent said a concern is that underwriters hire law firms who gouge them in legal fees, who then attempts to pass the fees on to the agent. An example is a claim for \$15,000 out of a bankruptcy. The underwriter hired a firm that was in a city more than two hours away from the property. The law firm prepared motions that were never filed. Three law firm partners worked on the claim. The law firm lost the case and the title agent was given a letter for reimbursement for the claim of \$15,000 and \$48,000 in legal fees.

Among his few claims, Maloney has had some that were legitimate and some that were not. If his company is responsible, it pays or corrects it.

“Not all claims are monetary, however, some are only faulty documents,” Maloney said.

Joe Reinhardt, senior vice president and chief claims counsel for Fidelity National Title Group, said some agents prefer to be more involved than others, so that can dictate how often the underwriter contacts an agent.

“Once agents receive the initial notification of a claim, I encourage them to reinforce with the claims administrator that they want to remain in the communication loop,” he said.

For Fidelity, the agent’s role in handling claims is outlined in the agency contract. While every claim has its own facts and circumstances, the agent’s role is generally to provide

notice of the claim to the underwriter – assuming the agent is the first to receive notice – and to provide any relevant information and documents.

“In more complicated cases, the role of the agent may expand, which could include being deposed or providing testimony at trial,” Reinhardt said.

For First American Title Insurance Co., there is no protocol for updating an agent to the ongoing status of

claims administration process. Good communication and follow through on the part of the agents and the underwriter is vital to the process.”

North American also keeps agents apprised of a claim status as deemed appropriate. The company expects its agents to promptly inform it of a claim and provide any assistance it can, such as providing production files and title information.

“The agent is one of the company’s

and more effective, Lee said prompt notification of a claim is helpful.

“The company views its agents as a team and business unit, both in production and in the claims process, with a collective goal of being responsive to and meeting the expectations of its customer,” she added. “If a claim is amenable to resolution through execution of corrective documents or other means, the company may request the assistance of the agent to aid in the curative process.”

Reinhardt agrees in cases where the agent issued the policy and likely conducted the closing, they are in the best position to provide relevant facts and documents surrounding the transaction.

“They should also feel free to provide any other suggestions or information that they believe would assist with the resolution of a claim,” he said.

“When a red flag presents itself in a transaction, the agent needs to increase the level of scrutiny and that simply means they need to ask more questions . . . before proceeding with a closing.”

a claim, but if an agent requests to be “kept in the loop” as things progress, the underwriter’s claim handlers will do so, according to Michele Green, vice president and National Loss Prevention Counsel for First American. Like others, First American considers agents as the best source of information when investigating a claim.

“Even if the information gleaned from the agent is not favorable to the outcome of the claim, it’s always best to know bad news as early in the process as possible. This partnership in getting to the right answer most quickly is both cost-effective and time-saving for First American and its insureds.

“We find our current agents, for the most part, to be cooperative in the

initial and crucial sources of information as to the events occurring during and at closing, how the issue at hand arose and knowledge of the principals involved in the transaction,” Lee said. “NATIC will not make a determination regarding an agent’s share of a claim expense without a thorough investigation and thoughtful analysis and collaborative discussion with the agent.”

WFG also informs its agents on claims status as significant events occur, such as the hiring of counsel, filing of a lawsuit or trial or judgment or payment of the claim. During the process, the company solicits input from the agent in order to amicably resolve the issue. To get more involved and make the claims administration process smoother

### Lost Messages?

The top item, however, to an efficient claims process is communication. Reinhardt said both sides need to remain engaged in maintaining open and responsive dialogue throughout the claim process. While some agents are afraid to pass along a potential claim notice, it’s important to contact the underwriter immediately. Several underwriters believe having a point of contact within the agency for the claims handler is helpful to the underwriter. Placing a call to the agent up front is always the best way to assure there aren’t any communication gaps.

However, agents say underwriters send emails and letters to the wrong individuals or offices within a company despite having the proper

contact. Another communication disconnect is that there appears not to be any uniform procedure within the underwriter's company.

"When speaking to multiple office agents, underwriters need to have a general contact," Calloway said. "Many offices are not fully staffed and many claims notices don't go to the right people. It needs to be the duty of the agent to update information with the underwriter and it's the underwriter's duty to follow the agent's notification."

Agents believe standardization in the claims process and coding would be helpful. In the past, ALTA collected claims data and had guidelines for claims codes to allow title companies and underwriters to inventory and understand their claims experience. It also allowed the industry to identify trends and problem areas for loss prevention and training purposes. The claims codes consisted of a risk code and a responsibility code. The risk code represented particular types of title claims, while the responsibility code characterized conduct believed to be responsible for the claim and identify the responsible party.

"Uniform expectations would be beneficial to the agent," Calloway said.

Being better informed about claims would enhance their operations, agents believe. Pearson said it could be used to train employees on items that could lead to a claim. If there are a number of claims being made in one area where an agent conducts business, it would be helpful to know so they don't open themselves to liability on similar issues.

"By knowing where we are weak, we can make ourselves stronger,"

Calloway said. "There are natural tensions in this relationship, but I think this communication could improve our own operations and therefore improve the industry.

"If we really know the detail of our sins, we can improve. There should be people charged with helping agents overcome their shortcomings and agents need to pay attention to those shortcomings."

### Preventing Claims

Reinhardt advises agents to pay particular attention to underwriting bulletins because they routinely outline current issues creating claim losses and the red flags that agents can look for.

"When a red flag presents itself in a transaction, the agent needs to increase the level of scrutiny and that simply means they need to ask more questions of the parties to the transaction before proceeding with a closing," he said.

Reinhardt also suggests bringing a local underwriting counsel or title officer into the loop. As an example, it is very unusual for a property to be free of any mortgages.

"A free and clear property should always raise a red flag," he said. "Any prior mortgage satisfactions should be examined to make certain they were part of another refinance or a sale – mortgage satisfactions don't just appear of record. Never rely on mortgage satisfactions that the seller or borrower bring to your office."

While several underwriters encouraged agents never to make coverage determinations or discuss coverage with an insured or claimant, agents should always verify signatures, licenses and identities to help thwart potential claims.

In addition to reading underwriter bulletins, agents should be diligent and strictly comply with the closing instructions and record promptly. Lee said agents should be "vigilant of potential frauds/forges and not lose sight of the big picture.

"Examine the title and listen to your inner voice," she said. "When in doubt, always call your underwriter. It takes seconds compared to the time and effort that a claim may require."

To be more involved in the claims process, Green encourages agents to review claim matters that arise from their policies, promptly and completely respond to requests for information and documentation, and maintain focus on the issue of loss prevention by getting to the "root cause" of any losses.

"Careful business practices, training and supervision of employees, education about changing law and practice, and learning common claim pitfalls – these are an agent's best weapons in the claim prevention battle," Green said.

Borst added that the largest single opportunity to avoid claims comes from having a system in place to quality control a closing or settlement before the file is put away.

"There are always going to be improperly handled estates, misindexed documents, and other 'basic risk' type claims, but having a solid closing and post-closing system at the agent level will help to avoid most claims," Borst said. ■



**Jeremy Yohe** is ALTA's director of communications. He can be reached at [jyohe@alta.org](mailto:jyohe@alta.org).

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# The Last Line of Defense to Prevent Mortgage Fraud

Closing/settlement agents and title insurers are the industry's last line of defense to detect unusual and/or suspicious activity as well as preventing a fraudulent transaction from being closed and insured.

This is a heavy burden for closing/settlement agents to shoulder since many times this means that the fraud scheme being perpetrated, typically by real estate industry professionals, has bypassed all of the lender/servicer's fraud mitigation controls built into their loan origination or servicing disposition (short sale and REO sales) process.

Mortgage fraud schemes often include manipulation of one or more of the following: compromised or manipulated Multiple Listing Service, reverse staging and other valuation (appraisals, broker price opinions) manipulation, altered or bogus qualification documents, undisclosed closing funds sources, colluded transactions involving predetermined straw "investor" buyers, third party payouts and many others.

In order to successfully manipulate the transaction and obtain their ill-gotten gains, the mortgage fraud perpetrator often has to control and compromise a number of pieces of the mortgage loan transaction. Then, when they finally land at the closing table, they must have the final piece of the jigsaw puzzle filled in by

obtaining closing settlement and title company cooperation to get those illicit funds into their pockets.

There are many different types of manipulation that can be in play in a single transaction, which can indicate something is afoot. The sort of activity that may be indicative of potentially fraudulent transactions could include situations where the closing settlement or title insurance is being done for a purchase or refinance origination loan transaction following the lender's general and specific closing instructions, or when a purchase transaction involving a servicer short sale where there is only an approval letter that includes the basic terms/conditions and short payoff demand that will be accepted.

All that topped off with your fiduciary closing duties to the principals means that it may be difficult to balance questioning suspicious activity versus letting the



## Red Flags to Potential Fraud

- Power of Attorney used and the attorney in fact is a party to the transaction who will financially benefit (other than a spouse or immediate family member who resides in the property)
- Recent changes of title where new owner is now selling the property
- Double escrow concurrent back-to-back transactions with deed transfers to intermediate straw buyers needed to facilitate the flip
- Funds to closing not coming from the buyer, but some other party involved in the transaction
- Payouts to third parties especially parties not on the lender's Specific Closing instructions
- Payouts to contractors and repair companies – especially when not on closing instructions
- “Unusual” sales contract addendums with terms /conditions and or payouts that are not the norm for the local market (this may not have been provided to the lender as a material omission)
- Buyer is a “real estate investor” where the seller is controlling all aspects of the transaction and who may or may not realize he is acting as a straw buyer (e.g. when speaking to the buyer in coordinating a closing, do they understand the transaction?)
- Recently recorded liens, often involving disbursement being paid to a participant in the transaction.

transaction close for the immediate gratification of the parties – but only to find out later there are title claims of millions of dollars associated with this and linked transactions.

### Origination Purchase and Refinance Transactions

In today's age, most mortgage loan transactions processed and approved by lenders never involve meeting the borrower face-to-face, so the lender never has the opportunity to obtain a copy of any identification in the process. The last line of defense in a typical origination loan, especially for preventing identity theft, is the closing settlement agent and Notary.

Conceptually, it seems a bit odd that hundreds of thousands

or millions of dollars are loaned out to borrowers for a purchase or refinance transaction, yet the lender never actually meets the borrower or authenticates their identity. That is handled at closing. In most cases lenders do perform some type of borrower identity authentication to help establish whom they believe they are communicating with by phone or email, but generally they never actually meet the borrower.

Currently, the most common origination fraud for profit schemes are concentrated in purchase transactions: illegal property flipping, builder bailouts, condo conversion/ bailouts and other schemes that primarily involve inflated values to

cash out the transaction (e.g. falsified repairs).

However, foreclosure rescue schemes, where the homeowner has been promised they can stay in their home and receive the title back after their “credit improves,” are also quite common. Unfortunately for the homeowner, such schemes often result in the perpetrators cashing out the equity and defaulting on the new straw-buyer loan, leaving the “former” homeowner destitute and homeless.

### Short Sale Purchase Transactions with the Loan Servicer

According to the FBI's Annual Mortgage Fraud Report, short sale fraud is the most common type of mortgage fraud for profit being perpetrated against our industry since 2008. While market perceptions abound that there is nothing wrong with an “investor” profiting when a servicer sells low and the investor is able to secure an end buyer at a market price (the concept of a short sale “wholesale” price vs. market retail price), the reality is there usually has been fraud perpetrated on the servicer by misrepresentations and material omissions to paint one picture of the transaction to the servicer for approval, yet a totally different market transaction to an end buyer where that “investor” profits from the difference.

In short sale flopping/flipping schemes, the real estate industry professional is typically the one benefiting and profiting from the transaction while victimizing the homeowner with excessive debt forgiveness that may be taxable versus a lesser debt forgiveness if property was sold at market price. In short sales it is also common for third party

## Just Say No to Mortgage Fraud

*"While we can't usually prevent a criminal's desire or ability to commit mortgage fraud, we can prevent the opportunity."*

– Source unknown

### Fraud Resources:

Fannie Mae Mortgage Fraud Program:

[www.efanniemae.com/utility/legal/antifraud.jsp](http://www.efanniemae.com/utility/legal/antifraud.jsp)

Freddie Mac Fraud Prevention:

[www.freddiemac.com/singlefamily/preventfraud/](http://www.freddiemac.com/singlefamily/preventfraud/)

FBI Mortgage Fraud:

[www.fbi.gov/about-us/investigate/white\\_collar/mortgage-fraud/mortgage\\_fraud](http://www.fbi.gov/about-us/investigate/white_collar/mortgage-fraud/mortgage_fraud)

Stopfraud.gov – Financial Fraud Enforcement Task Force:

[www.stopfraud.gov/index.html](http://www.stopfraud.gov/index.html)

ALTA:

[www.alta.org/advocacy/mortgagefraudlinks.cfm](http://www.alta.org/advocacy/mortgagefraudlinks.cfm)

negotiators to attempt to obtain compensation from the transaction by either sliding in fees or requiring the buyer to pay their fees as a condition of closing the sale transaction.

While short sale fraud takes many forms and uses various techniques, there are some common red flags for closing/settlement and title insurers to be aware of that are indicative of potentially fraudulent short sale transactions:

- Double escrow concurrent closing transactions – whether or not funds to acquire the property are coming from the closing of the flip sale or if there is “dough for a day” interim transactional financing facilitating the investor purchase for quick resale.



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## Title Officer Saves Servicer More Than \$2 Million Dollars in Excessive Short Sale Fraud Loss

Recently, a title officer in southern California encountered two short sale transactions that were closing as double escrow transactions. In one transaction the short sale lender had a sales price of \$950,000 and a same day closing for a transaction of \$1.8 million. Although the proceeds of the second transaction were not being used to close the \$950,000 transaction simultaneously, which would have clearly been an unacceptable flip transaction (the \$1.8 million was using “dough for a day” transactional financing to facilitate the back-to-back closings), the title officer clearly knew that it didn’t make sense that the servicer would sell the property for half the value being paid by the end buyer on the very same day.

The title officer contacted the servicer with the information and supplied the HUD-1s which enabled the short sale lender to prevent an \$850,000 excessive loss due to short sale fraud. As it turns out the servicer’s appraisal had been manipulated to artificially support the lower sales price.

The other transaction had the same characteristics as this flip/flop, and once reported to the servicer, the transaction was able to be stopped preventing both a short sale fraud loss to the servicer as well as a very large title insurance claim.

While we can’t name names or provide the specific servicer involved, suffice it to say that the servicer was extremely grateful to the vigilant title officer who single-handedly saved them (and the underlying investor and tax payer on a government program) from losing almost \$2 million on just two transactions.

- Sales contracts that have language saying buyer intends to immediately resell at a profit, or unusual addendums or supplements that have language that supersedes the servicers’ approval letter, affidavits or contract addendums
- Sales contracts and addendums with provisions for paid outside of escrow closing that are not to appear on the HUD-1 (typically paid to benefit seller or possibly a junior lien holder)
- Payouts to liens recently recorded where lien holders are parties to the transaction (not servicers accepting a short sale)
- Homeowners Association payoffs – excessive amounts especially if not a title lien for back association dues
- Cash back to the short seller borrower (no servicer allows the homeowner seller to reap financial benefit back in their pocket in a short sale)
- Bundling closing/settlement fees into a higher amount on the HUD where the inflated fee includes a kick back to the third party negotiator (RESPA violations) and not disclosed as a line item on the HUD (servicers do not typically pay for the services of third party negotiators)
- Real Estate licensees attempting to obtain additional negotiation or

other fees in addition to their listing or selling agent commission on the HUD

- No title insurance being obtained by the buyer on a cash purchase transaction (indicative of concurrent or quick flip transaction)

### Report Suspicious Activity/ Suspected Fraud:

For Bank of America transactions (origination or serviced loans), we have a mortgage fraud hotline where any external party can report suspicious activity / suspected fraud: [Mortgagefraudhotline@bankofamerica.com](mailto:Mortgagefraudhotline@bankofamerica.com). Please note this is not an escalations or customer service contact email, but only used for reports of suspicious activity. When sending the email please provide us with whatever information you have to report (the suspicions don’t need to be verified or confirmed), property address of the transaction, our loan number (if known), along with any PDF documentation you can readily provide (e.g. HUD-1).

And remember you are our last line of defense against mortgage fraud as well as representing your employer who will have financial liability for that fraud, so please stay vigilant and be brave as sometimes you will have to say “no” when every one of the principals wants you to just say “yes.”



**Patrick Aliano** is senior vice president of Mortgage Fraud Prevention for Bank of America Home Loans. In this role, he is responsible for

developing fraud prevention communications and policy across loan originations and servicing. Aliano can be reached at [patrick.aliانو@bankofamerica.com](mailto:patrick.aliانو@bankofamerica.com)



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# U.S. Supreme Court Expected to Make Ruling in First Am v. Edwards RESPA Case

Companies ranging from Toyota to Facebook support First American because the decision could have a significant impact on the ability to file lawsuits without proving a party suffered any damages.

**T**he U.S. Supreme Court is expected to make a ruling this spring in a case that will determine who has the right to sue for damages under the Real Estate Settlement Procedures Act (RESPA).

The case, First American Financial Corporation v. Edwards, involves a basic question of constitutional law addressing who has standing to bring a lawsuit under RESPA. Denise Edwards sued First American over an alleged kickback under Section 8 of RESPA despite not alleging she was overcharged for title insurance, received deficient service or was dissatisfied with her experience in any way. Typically, consumers are only entitled damages when they can prove they were actually injured.

Edwards paid First American \$455 for title insurance as part of a home purchase in 2006 while the seller paid an additional \$273. She alleges that

First American had an arrangement with Tower City Title Agency to refer title insurance business exclusively to First American, which owned a minority stake in Tower City.

The Supreme Court heard oral arguments in December. Representing First American, attorney Aaron Panner opened his argument by saying the law requires a private plaintiff to show at a minimum that the alleged conduct “made her worse off.”


“Factual injury does not automatically follow from violation of a statutory duty owed to the plaintiff, and Ms. Edwards has not alleged the type of harm alleged by the plaintiffs in the common law cases that she invokes – no misappropriation of her property, no loss of desired



opportunity or benefit, no injury to reputation,” Panner argued.

During Panner’s argument, Justice Stephen Breyer posed a hypothetical scenario about whether a consumer who received a call from a telemarketer despite being on the federal “Do Not Call” list could sue for damages, even if the consumer enjoyed the call.

Panner told Justice Breyer the consumer could not sue if she does not have actual injury. The fact of the statutory violation would not give rise to standing.

 “I never thought of title insurance companies as being fungible. There’s a quality to the research they do.”

“I think that it would be quite unlikely that a plaintiff would come before the court and say ‘Actually the statutory violation delighted me. I nonetheless would like my \$500,’” Panner said.

Panner went on to tell the Justices that the plaintiff paid money for a title insurance policy that she received.

“She paid at the legally required rate, and she makes no complaint about the policy, nor does she claim that it would have mattered to her,” Panner continued.

Justice Samuel Alito asked what a plaintiff who purchased title insurance in Ohio could allege that would be sufficient to provide standing. Panner offered several examples, such as a delayed closing or poor service. Justice Alito then asked

if there is any real service provided when title insurance is purchased.

“You get a title insurance policy and that’s it. You don’t know what will happen if there is some problem alleged with the title at some point down the road,” Alito said.

Panner explained title insurers bear the brunt of the risk, which is why they have no incentive to encourage poor service by a title insurance agent. That response led Justice Anthony Kennedy to explain the value of the curative process.

“I never thought of title insurance

companies as being fungible,” Kennedy said. “There’s a quality to the research they do.”

Edwards’ attorney focused his argument on RESPA 8(a) creating a limited fiduciary duty owed by title agents to consumers and a consumer’s right to a “conflict-free referral.”

Justice Kennedy had difficulty with this argument. “If you were to say he was entitled to it and therefore, there is an injury, that’s just – that’s just circular,” he said.

ALTA filed an amicus brief in support of First American informing the court about how allowing these no-injury class actions would negatively affect the entire title industry.

“A buyer who has suffered no increase in the cost of her title insurance policy and no decrease in the quality of service associated

with the policy may, according to the decision, bring suit – even a massive class action – for the sole purpose of collecting an unwarranted bounty,” ALTA wrote. “If permitted to stand, the decision below will pointlessly raise the cost of doing business in the industry, hobbling small businesses and counterproductively raising the price of title insurance services for the everyday consumer the law seeks to protect.”

ALTA believes this case threatens the title insurance industry with enormous, unforeseen liability for common and longstanding business arrangements, like shared ownership entities and exclusive agency agreements.

In a previous amicus brief, ALTA asked the Supreme Court to review the case to provide clarity to title companies on how to comply with RESPA in light of the prevalence of these ownership agreements in the industry. ALTA believes the standing question affects all participants in the title insurance industry because it could impact the ability for consumers to initiate class action suits against the industry. By clarifying when these lawsuits are viable under federal law will give the entire industry guidance on how to operate going forward.

Several businesses from Facebook to Toyota have filed briefs supporting First American, arguing that allowing these lawsuits by people who haven’t suffered damages encourages potentially bankrupting class-action lawsuits. The U.S. government, consumer groups and attorneys general from 11 states have filed legal briefs support Edwards, arguing that these lawsuits are needed to ensure that companies comply with consumer protection laws. 

# Industry Trade Associations Commend President's Plan to Help Responsible Homeowners

## The President Also Pushes the Need for Improved Mortgage Disclosure Forms.

**E**xpounding on his State of the Union address, President Obama in February detailed his plan to “help millions of responsible homeowners” by making it easier for them to refinance their mortgage.

President Obama’s plan would help eligible, underwater homeowners who are current on their mortgage payments to refinance or modify their loan into safer, more affordable mortgages and take advantage of historically low interest rates, helping homeowners save hundreds of dollars each month and reduce default rates.

ALTA commended President Obama’s plan to bring relief to millions of struggling homeowners and heal our depressed housing market.

“In order to see more movement in the housing market, there should be solutions presented for the problems

of responsible homeowners who are current on their mortgages but underwater with their mortgage because of the drop in their home value,” said Michelle Korsmo, ALTA’s chief executive officer. “Improving access to simple, low-cost refinancing is vital to rebuilding a stronger housing market, and ALTA will work with Congress and the administration to put this plan in motion and keep hardworking families in their homes.”

Echoing Korsmo’s comments, Moe Veissi, president of the National Association of Realtors and a broker-owner of Veissi & Associates Inc., in Miami, said helping hardworking families who stayed current on their mortgage payments refinance into lower-cost mortgages will help keep more families in their home.

“We hope that the president and Congress will work together to pass the necessary legislation,”

he said. “Now is the time to work together and look for new ways to help struggling homeowners and the housing market.”

The president’s plan also announced a Federal Housing Finance Administration pilot program to transition Real Estate Owned (REO) properties into rental housing. NAR urged the FHFA to proceed cautiously with the REO-to-rental program since housing markets are complex and varied. NAR said an overly aggressive REO-to-rental program that is not privately administered by local entities and does not involve substantial participation of local market experts, especially licensed real estate professionals, could be disruptive and counterproductive to communities already suffering from high foreclosure inventories and lower housing values.

The Mortgage Bankers Association and National Association of Home Builders also offered support of the president’s housing plan.

“Clearly, more decisive actions are needed to increase refinancing opportunities, to reduce the inventory of foreclosed homes and to prevent additional homes from going into foreclosure,” said Bob Nielsen, chairman of the National Association of Home Builders (NAHB) and a home builder from Reno, Nev. “To create jobs and further stabilize housing and the economy, NAHB is also urging policymakers to end excessively tight lending standards



that are preventing qualified borrowers from obtaining a mortgage and home builders from getting construction loans to build viable projects in communities that want and need them.”

The American Bankers Association also commended the president, but warned that many of the proposals will limit or delay recovery.

“The refinance proposal unfortunately includes a tax on banks, which will directly reduce lending capacity and banks’ ability to lend up to \$100 billion,” said Frank Keating, president and CEO of the ABA. “(The) ABA is concerned that uncoordinated and ever-changing government programs, including those detailed today, create uncertainty in the market, increase the cost of homeownership, and reduce credit availability needed to support homeownership and the economic recovery.”

Obama’s plan would allow borrowers with mortgages not guaranteed by government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac to refinance through a new program run by the Federal Housing Administration (FHA).

Like last year’s HARP 2.0 revisions, ALTA believes title insurance is expected to be required for these refinances. This proposal will streamline the refinancing process by requiring only minimal eligibility requirements, including:

- Current on their mortgage: Borrowers will need to have been current on their loan for the past 6 months and have missed no more than one payment in the 6 months prior.
- Minimum credit score. Borrowers must have a current FICO score of 580 to be eligible. Approximately

nine in 10 borrowers have a credit score adequate to meet that requirement.

- Non-Jumbo Loans: Currently, FHA limits vary geographically with the median area home price - set at \$271,050 in lowest cost areas and as high as \$729,750 in the highest cost areas.
- Single family, owner-occupied principal residence.

There would also be a streamlined application process. Borrowers will not be required to submit a new appraisal or tax return. While lenders will only need to confirm that the borrower is employed. Those who are not employed may still be eligible if they meet other requirements.

In addition, the proposal also has a feature designed to help underwater borrowers rebuild their home equity faster. If a borrower decides to refinance into a shorter-term mortgage product (15- or 20-year), the GSEs or FHA will cover their closing costs. This is expected to net the borrower about \$3,000.

As part of his plan, Obama discussed the creation of simpler mortgage disclosure forms that will help borrowers better understand the loans they are getting. During his speech, Obama shared a personal experience of how the forms can be confusing.

“Now, think about it. This is the most important purchase a family makes. But how many of you have had to deal with overly complicated mortgage forms and hidden clauses and complex terms? I remember when Michelle and I bought our first condo – and we’re both lawyers. And we’re looking through the forms and kind of holding it up – reading it again – ‘What does this phrase mean?’ And that’s for two trained

lawyers. The forms, the confusion, the potential for abuse is too great just because the forms were too complicated.”

The Consumer Financial Protection Bureau (CFPB) is in the process of developing new disclosure forms to replace current forms that are confusing for borrowers.

“To feel confident in the largest purchase they will make, homebuyers should be able to easily understand where their money is going,” Korsmo said. “Just like when you go out to dinner, your check doesn’t just give you a total price. Rather, each item is listed giving you a breakdown of what you pay for. Purchasing a home should have the same transparency.

“ALTA members are the real estate professionals responsible for providing these important disclosures to consumers at the closing table. We will continue to work with the CFPB and others to make these forms as useful and transparent as possible,” Korsmo continued.

While legislation will likely be needed to implement these new protections on a large scale, the president has already asked FHA, VA, USDA and Treasury to propose these requirements for the programs that they manage, including the HAMP program.

“ALTA will work with the Administration to ensure that regulations are crafted to ensure the finality of a foreclosure judgment or sheriff’s deed and do not impair the protection of bona fide purchasers,” said Justin Ailes, ALTA’s vice president of government and regulatory affairs. ■

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## Title Source Completes Two Unique Online Closings

Troy, Mich.-based Title Source reported it performed two groundbreaking Smart Option Signing online closings in December 2011.

On Dec. 23, Title Source completed its first international Smart Option Signing with a couple located in Singapore. The couple, Edwin and Wendy, logged into a secure Smart Option Signing portal and was instantaneously connected with Title Source closing agent Greg Johnson. The couple completed an online closing – via live video feed – successfully refinancing their Florida property.

On Dec. 9, Title Source performed another unique

Smart Option Signing with a Montana couple. The husband and wife were located in two different geographic areas. Cheryl was located in Big Fork, Mont. Her spouse, Mike, was working in a zinc mine in Red Dog, Alaska. The Alaskan city is 100 miles north of the Arctic Circle and 1,000 miles away from any major city. Title Source worked with Mike to establish a high-speed Internet connection. Once set up, Cheryl and Mike logged on and successfully closed on a Montana property with the assistance of Title Source Smart Option signing agents.

## Knight Barry Title Group Opens Chicago Office

Wisconsin-based Knight Barry Title Group continued its expansion efforts with the opening of an office in Chicago to process and coordinate commercial transactions anywhere in the United States.

The company also announced several new hires in conjunction with the new

office. Chris Kaufmann will be responsible for Knight Barry's operations in Illinois; Paul Yannias will oversee commercial title, closing and construction escrow services; and Jim Shehan will be responsible for commercial sales and client development for the Chicago area.

## MBA Forecasts \$230 Billion of Commercial/Multifamily Mortgage Originations in 2012

In its inaugural forecast of the commercial/multifamily real estate finance markets, the Mortgage Bankers Association (MBA) projects originations of commercial and multifamily mortgages will hit \$230 billion in 2012, an increase of 17 percent from 2011 volumes.

Commercial/multifamily mortgage debt outstanding is expected to also grow in 2012, ending the year above \$2.4 trillion, two

percent higher than at the end of 2011.

Commercial/multifamily mortgage bankers' originations volumes are projected to rise to \$230 billion in 2012, \$245 billion in 2013, \$265 billion in 2014 and \$290 billion in 2015. The increases in originations activity will push commercial/multifamily mortgage debt outstanding to \$2.4 trillion by the end of 2012 and more than \$2.5 trillion in 2015.



▲ VALUE OF TITLE INSURANCE: ALTA Past President Mark Winter, chairman of ALTA's International Development Committee, recently met with Gary Doer, the Ambassador of Canada to the United States, to discuss the value title insurance products provide to the Canadian real estate market with solutions that enhance the transaction process and increase secure land ownership. Ambassador Doer expressed his appreciation for the valuable service title insurers provide.

### FNF Purchases SoftPro from LPS

Fidelity National Financial (FNF) announced it has purchased SoftPro, a leading provider of closing and title automation software, from Lender Processing Services (LPS).

The deal was finalized Jan. 12. Terms were not disclosed.

“Fidelity National Financial’s core competency matches up with our products and services, so from a strategic perspective this deal makes perfect sense,” said Joyce Weiland, president of SoftPro. “While LPS serves most of the major mortgage companies in the U.S. and provides processing for more than half of all U.S. home loans, we were a small business unit with LPS.”

FNF originally acquired SoftPro in 2001. After a couple of spinoffs, FNF once again owns the production system provider.

“We became aware that LPS was exploring strategic options for the asset, so we threw our hat into the ring,” said John Crowley, FNF’s chief information officer. “FNF has over 3,000 SoftPro users, and a large number of our agents utilize the

product. Our principal focus now is to provide the team at SoftPro an opportunity to continue serving FNF and their other customers in the fashion to which we had become accustomed.”

Headquartered in Raleigh, N.C., SoftPro has more than 14,000 customer sites across the country. To support demands of both its single-office customers and large, multiple-branch operations, the software provider offers a wide range of products in standard and enterprise editions. While FNF is SoftPro’s largest customer, title agencies comprise the bulk of its business.

“We have a diverse network with thousands of agents and other underwriters that use our applications,” said Tim Conley, SoftPro’s vice president of sales and marketing. “Being acquired by FNF is a perfect marriage. This won’t change how we service agents, but will bring increased functionality. Anything that FNF’s direct operations may require will benefit agents and any future developments will help everyone in the industry.”

### Distressed Sales Lead to 4.7 Percent Drop in 2011 Home Prices

Distressed home sales led to a 4.7 percent decrease in home prices in 2011 compared to the prior year, according to CoreLogic’s latest Home Price Index report. However, excluding distressed sales, the report shows that home prices decreased by 0.9 percent in 2011, giving an indication of the impact of distressed sales on home prices in 2011.

Report Highlights:

- Including distressed sales, the five states with the highest appreciation were: Montana (+4.4 percent), Vermont (+4.0 percent), South Dakota (+3.1 percent), Nebraska (+2.5 percent) and New York (+1.7 percent).
- Including distressed sales, the five states with the greatest

depreciation were:

Illinois (-11.3 percent), Nevada (-10.6 percent), Georgia (-8.3 percent), Ohio (-7.7 percent) and Minnesota (-7.5 percent).

- Excluding distressed sales, the five states with the highest appreciation were: Montana (+7.7 percent), South Dakota (+3.5 percent), Indiana (+3.3 percent), Alaska (+3.1 percent) and Massachusetts (+2.9 percent).
- Excluding distressed sales, the five states with the greatest depreciation were: Nevada (-9.7 percent), Minnesota (-5.2 percent), Arizona (-4.9 percent), Delaware (-4.2 percent) and Michigan (-3.5 percent).

### Landtech Introduces eSign

Landtech Data Corp., a provider of real estate settlement software, has made available for free its initial introduction of Landtech eSign, which is now available in the App Store for iPhone and iPad. This initial introduction of Landtech eSign will be followed with a full connection to the Landtech XML

Document Management System so title professionals can prepare, execute and distribute documents digitally. The documents then can be signed on the iPhone or iPad just like using ink and paper, according to the company. With the built-in emailer, signed documents can be emailed directly from an iPad or iPhone.

## Former ALTA President Robert Bates Passes Away at Age of 89

Robert C. Bates, who served as the 1979-80 ALTA president, passed away Jan. 6 at the age of 89.

In addition to serving as ALTA president, Bates also was on the Board of Governors, was chair of the Title Insurance and Underwriters Section and served on the Executive Committee, Government Relations Committee and Federal Legislative Action Committee. He also chaired the Liaison Committee with the MBA, Planning Committee and Retirement Committee. Bates also was an ALTA honorary member.

"Bob was a fine person as well as a strong advocate for the land title industry and the American Land Title Association," said Bill McAulliffe, who served as executive vice president of ALTA from 1965 to 1984.

Roger Bell, who served as ALTA president from 1978-79, said Bates "had the reputation of being the

conscience of the American Land Title Association."

"Bates was open, friendly and obviously smart. He was a very good titleman and superb people person," Bell said. "Anyone meeting Bob for the first time would be bombarded with questions – not because he was nosey, but because he wanted to get to know you and his questions about you and your activities was the way to do so."

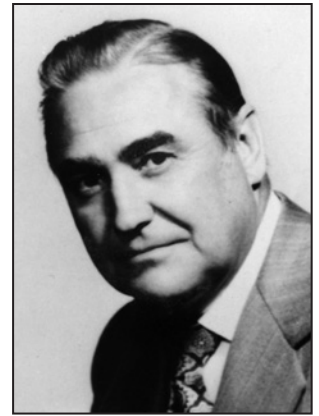
Bell said Bates had a deep passion for the title industry and always had the welfare of title agents on his mind.

"Any discussion in the Executive Committee would always result in Bob asking how a problem was viewed by the agents," Bell said. "Making sure that buyers and lenders could depend on their titles to real estate was, in Bob's judgment, a key element in the dynamic real estate market that this country has enjoyed over the years."

The friendship between Bates and Bell grew from their underwriter and agent roles to long-time friends. Bates and his wife, Claudia, who passed away in 2010, traveled with Bell and his wife, Helen, many times over the years.

Bates served in the Air Force with Gen. Patton's army during World War II from 1942-47 and the Korean Conflict from 1950-52. Bates attended the University of Missouri and graduated from the Kansas City School of Law in 1950.

After serving in the Air Force, Bates started his professional career in 1952 with Kansas City Title Insurance Co. In 1982, Bates retired from Chicago Title Insurance Co. where he was executive vice president and general counsel and from Chicago Title and Trust Co. where he was executive vice president. After retiring from Chicago Title, Bates joined the Board of



Directors of Bell's company, Security Abstract & Title Co. Inc., in Kansas.

Through Chicago Title's mentoring program, Bates advised Chris Abbinante briefly when ALTA's current president was getting his feet wet in the industry.

"I wish I had gotten the opportunity to work more closely with him," Abbinante said. "He represented what was good about the industry. He had a clear sense of what was right and strived to ensure that he and those around him and the company stayed on that path."

## MBA Reports 2011 Commercial/Multifamily Mortgage Servicer Rankings

Wells Fargo topped MBA's commercial and multifamily mortgage servicers with \$437.7 billion in 2011.

PNC Real Estate/Midland Loan Services (\$355.1 billion), was next

followed by Berkadia Commercial Mortgage (\$176.5 billion), Bank of America Merrill Lynch (\$115 billion) and KeyBank Real Estate Capital with \$108.2 billion.

## New Jersey-Based Title Company Acquires Competitor

CoreTitle LLC recently purchased the assets of competitor Garden State Abstract Company (GSA) of Marlton, N.J., from GSA majority owners Jeff Snyder and Joe Ventresca, co-owners

of the RE/MAX of New Jersey franchise. Principals David T. Dannheim, president, and Justin M. Steinberg, vice president, launched CoreTitle in August 2011.

### Settlement Services Company Plans to Add 100 New Jobs in 2012

To accommodate its expected growth, United Lender Services plans to move into a 48,000-square-foot facility in Pittsburgh in June.

ULS was acquired in 2011 by USAA Real Estate Company, a subsidiary of financial services giant, USAA. The purchase has now enabled ULS to expand their title insurance services to

the USAA membership as well as their current client base. As a result, ULS, which currently employs approximately 65 employees, expects to triple in size over the next 12 months, according to William McNamara, president and CEO of United Lender Services. The company expects to hire more than 200 people over the next two years.

### Bank of America Halts Originations of Cash-Out Refinances

Citing a “surge of refinancing activity” and capacity problems, Bank of America in late January temporarily halted cash-out refinance originations.

“While we regret the inconvenience this will cause to some of our customers in the short term, we are making the responsible choice that is in the best interest of

our long-term capabilities to provide a predictable customer experience,” Matt Vernon, a Bank of America home loans sales executive, wrote in a memo.

Bank of America’s production of this product declined 75 percent to \$22 billion during the fourth quarter of 2011 compared to Q4 2010.

### RedVision Acquires Real Property Data Division of Abstract Company

RedVision, a national provider of title information and real property research solutions, acquired the real property research division of Security Search & Abstract Company Incorporated. This division, which

is the majority of Security Search & Abstract’s business, has predominantly provided title reports and real property information for over four decades to the Pennsylvania and New Jersey markets.

### Old Republic Reports Full-Year and Q4 Earnings

Old Republic International’s title insurance group posted a profit of \$18.3 million in the fourth quarter of 2011 and a profit of \$36 million for the entire year, the company reported.

These earnings compare to a profit of \$8 million during the fourth quarter of 2010 and profits of \$9 million for full year 2010.

“When we look back at the Title Insurance business for the year, we would say we continue to be pleased that it seems to be making good progress in spite of what we would all say continues to be a

somewhat choppy recovery in the housing finance business,” the company said in its earnings release.

The company reported total premiums and fees continued to show some comparative growth in the business and were up about 4 percent compared to fourth-quarter 2010.

The claims ratio for fourth-quarter 2011 compared to fourth-quarter 2010 dipped to 7.8 percent from 8.4 percent, but was fundamentally flat in the year-to-year comparisons standing at 7.8 percent for 2011.

### Industry Veteran, Author of ‘Real Estate Titles’ Passes Away

James M. Pedowitz, 96, a long-time industry veteran and author of “Real Estate Titles,” passed away Jan. 26.

Described as a perfect gentleman and industry leader, Pedowitz was heavily involved in ALTA, serving on the Judiciary Committee from 1972 to 1979, representing the Federal Court, 2nd Circuit (Connecticut, New York, and Vermont), and as chair of the Committee on the Commission on Uniform Laws from 1975 until 1979.

He was a renowned real estate attorney with a special expertise in real estate title law. His text titled “Real Estate Titles” is considered the definitive writing on the title industry and was in its third edition.

Pedowitz served as first vice president and chief counsel for The Title Guarantee Company from 1969 to 1979. He also served as vice president and regional counsel for Pioneer National Title Insurance Company from 1972 to 1979.

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# Protect Your Industry's Future

- The Title Action Network is an energized movement of title insurance industry professionals promoting the industry's value and protecting homeownership rights.
- From state houses, to Washington, D.C., elected officials make decisions that impact our industry, our customers and consumers.
- That's why it's vital to speak with one voice about the role we play.
- It's easy and free to join.

Join today, take action and invest in the industry's future.

Go to [www.alta.org/tan](http://www.alta.org/tan)

**TITLE  
ACTION  
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## Real-Life Anecdotes Help ALTA Tell Our Story

**T**hink about the interesting stories you share with your family and friends. What's a theme they all have in common? If you kept their attention for more than 30 seconds, your story probably connected emotionally with whomever you were speaking with.

The same holds true when attempting to explain the importance and value of title insurance. Our industry has an amazing story to tell. We all know that. However, the message gets lost in translation when we explain the technical aspects of a search and exam, and what's covered in a policy. We must connect with consumers by sharing examples that they can relate to and understand.

Think about some of the advertisements that were shown during this year's Super Bowl. Whether it was a talking baby, animals or super models, the most receptive spots didn't focus on specifics. Rather they focused on an emotional bond that can be derived from the product.

The end goal is to build a bond with the consumer that leaves them feeling connected and confident in the relationship, and ultimately receptive to the message. Consumers want things to go smoothly when buying a home. Our message is that we make that happen.

We know about the hard work that takes place behind the scenes to make sure deals close properly and smoothly. We need to share the issues that were corrected that could have undermined the deal or caused ownership issues down the road.

ALTA wants to collect your stories from the front lines.

We want to know how a consumer benefited from an Owner's Policy. We want to know the curative actions that were needed to be performed so a deal could close. We want to know about times when you or your company solved an issue and helped prevent a claim from occurring. We want to hear about the stories that made the homebuyer's transaction go smoothly.

These anecdotes will be helpful in developing messaging for consumers and policymakers.

You can help ALTA explain the industry's value by submitting your real-life examples to [communications@alta.org](mailto:communications@alta.org).



– Frank Pellegrini, ALTA President Elect

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