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“**WHAT WOULD YOU ATTEMPT TO DO IF YOU COULD NOT FAIL?**” In bold font above my computer, this powerful reminder greets me every day when I enter my office. As this quote challenges me and our growing team every day to continually push the envelope of our market and product leadership, let this message challenge you and your team, as we confidently navigate together out of 2010 and into 2011.

As “change” has become synonymous with our respective industries, 2010 forced the industry to “get lean,” get efficient, persevere, diversify with new products and offerings, and expand our horizons geographically. RESPA, HUD changes, legislative and consumer pressures, record foreclosures, foreclosure moratoriums, record gold prices and a falling U.S. dollar provided an impetus. Unprecedented *shadow inventories*, increasingly complex regulatory controls and changes, and market uncertainty have made us all resilient and persevering. If you are reading this letter, you have “weathered the storm” thus far. All of this change has continuously pushed all of us towards the fundamentals of keeping a close eye on cost of sales, centralization techniques, product diversification, automation and efficiency improvements, and also towards transparent, customer-facing technologies to improve customer service. For the first time, many of us have embraced *Transactional Robotics*™, XML technologies, automated Action Lists, e-mail and fax integration, dynamic triggers and affects, and forward-thinking tools that will help us thrive and survive these difficult times.

The good news is that ***now is the perfect time to passionately embrace this change*** and act upon the guiding quote above. 2011 continues to be a perfect time to evaluate the current state of your markets, your workflows, your vendors, your business model, your technologies, your use of automation, and your software! You wouldn’t build airplanes without an assembly line and automation, would you? You wouldn’t change the wings of a plane during flight at MACH 3, would you? Your title, escrow, appraisal, mortgage, REO, and real estate business is ***still*** no exception. Seize the day and take decisive action in 2011 to build the solid foundation for your business with an automated “assembly line” workflow processes!

Use this period in early 2011 to build efficiencies, transparency, repeatability, automation, and improved profitability that will help you maintain and sustain your competitive advantage into 2011 and beyond! We challenge you to use this report as an explosive catalyst for this change in your organization!

We are honored to sponsor this October Research publication for the second year in a row and we look forward to continuing to help you passionately embrace and manage change within your organizations. We would encourage you to contact us and dare us to prove to you why **ResWare™ Changes Everything**. As we have explosively grown in 2010, one thing has remained constant…No one has more passion for your success!

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Again, I wish you, both personally and professionally, a tremendously successful and profitable 2011. May it be another pivotal year of steadfast, positive change within your life, business and our industry…Godspeed and good luck! Remember, WHAT WOULD YOU ATTEMPT TO DO IF YOU COULD NOT FAIL?

My best personal and professional regards,

Curt Szymanski, *President*

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ECONOMIC OVERVIEW

SLOW RECOVERY FRUSTRATING, BUT SUSTAINABLE

Americans have little patience for the tortoise pace of the economy of recent years, hoping something will miraculously infuse a burst of energy into the sluggish pace and produce a more robust pattern. But economists continue to predict that we will merely "muddle through" 2011, holding out little hope of a dramatic turn-around.

Then Ginnie Mae President **Joe Murin** was close to the mark in 2009 when he suggested a slow recovery was inevitable and even perhaps, preferable.

"We could be postured for a slow, steady recovery that could take time but will be beneficial in the long run," he said, speaking at the National Settlement Services Summit in Cleveland, Ohio. "I do see us having to adjust our expectations for the future. We must focus on financial returns that are more modest but more sustainable."

His prediction continues to play out in the marketplace. Although the GDP adjusted upward to 2.8 percent by the end of 2010, a modest improvement in an otherwise bleak year, economists remain conservative in their predictions for 2011. The Mortgage Bankers Association's (MBA) most recent prediction stands at 2.7 percent growth for 2011, slightly lower than the Bank of America Merrill Lynch Global Research forecast which puts it at 2.8 percent.

The Kiplinger Report forecast, released in the last week of December, raised the ante, opining that the tax deal worked out by President Obama and the Republicans would boost that number to 3.5 percent, still modest compared to past recoveries.

Unemployment rates uncertain

One of the biggest unknowns that will make or break 2011 is the unemployment rate. While predictions are that we will see a modest improvement, the hope for reducing unemployment to the 7 or 8 percent range is slim. Predictions are that as many as two million additional jobs could be added in 2011, substantially contributing to further stabilization, but leaving the unemployment rate chronically elevated for yet another year.

There are some hopeful signs. In the most recent Federal Reserve Beige Book report released in December, it noted that hiring activity showed some improvement across most districts, although "employers are waiting for clearer signals of expanding business prospects before adding significantly to payrolls." December results substantiated that optimism. Unemployment dropped to 9.4 percent in December down from 9.8 percent in November.

While the Federal Reserve reported real estate and construction remained at low levels throughout all of its districts, two things could improve the 2011 outlook — improved employment numbers and pent-up demand. While such improvements would result in a faster absorption of homes already on the market, new home construction is expected to remain sluggish while that shadow inventory continues to attract the existing pool of buyers.

Reports on consumer spending tended to be positive in the final quarter of 2010, with holiday sales reported to be healthy. But it was noted that households remain conservative and price conscious.

Business spending is expected to grow at about 8-10 percent in 2011, further reflecting the anticipation of modest growth.

WASHINGTON & THE DODD-FRANK ACT

FINANCIAL REFORM BECOMES A REALITY IN 2011

Industry professionals tied to the mortgage and financial markets will need to keep a close watch on laws and regulations that affect their businesses in 2011. At the top of the list is the Dodd-Frank Wall Street Reform and Consumer Protection Act.

In 2011, a grueling battle will continue to intensify between Republicans, Democrats, regulators, and industry trade groups and stakeholders over how best to approach reforming the financial services sector. While legislation in 2010 signed by President **Barack Obama** defines the path forward, the controversial law did not come without vigorous and lengthy debates between the Democrat and Republican parties, many of which will continue in 2011.

The Dodd-Frank Act was written in the 111th Congress with Rep. **Barney Frank**, D-Mass., and Sen. **Christopher Dodd**, D-Conn., taking the leads on its drafting. It was signed into law on July 21, 2010. It addresses hundreds of areas in the financial services and mortgage markets.

The Republicans, who reluctantly succumbed to signing off on the Dodd-Frank Act, garnered a more powerful presence in the 112th Congress by winning the House majority in the 2010 elections. With the increased number of seats on Capitol Hill, they are threatening to repeal certain portions or make substantial changes to the massive, more than 2,300-page law that completely overhauls the nation's financial services markets.

On Jan. 6, Rep. **Michele Bachmann**, R-Minn., introduced new legislation (**HR 87**) to repeal the Dodd-Frank Act entirely, calling it a "job-killing" law and stating it "expands the federal government beyond its jurisdictional boundaries." But with the Democrats still maintaining the majority in the Senate and with Obama in office, financial services experts, while expecting Republicans to achieve some success in watering down parts of the law and its regulations, say the scope and bulk of the law will remain intact.

Regardless of where Congress and the regulators end up in their debates about the details of the Dodd-Frank Act and its regulations, all of those on the Hill speaking about it agree financial reform is necessary and changes will ultimately be forced upon the financial services markets.

One of the most controversial sections of the new law is the creation of the CFPB. The bureau is to be up and running by July 21. **Elizabeth Warren** was appointed by Obama to oversee its establishment and serve as a special advisor to Treasury Secretary **Timothy Geithner**. Obama continues to receive pressure from Congress to appoint the director of the agency, but until one is appointed and approved by the Senate, Warren and Geithner are assuming oversight. The director will serve a five-year term.

Industry professionals can expect to see increased enforcement as a result of the new bureau and members of the legal community are hoping to get clarification on existing regulations surrounding consumer protection statutes.

Warren said she intends to create a state-of-the-art bureau, incorporating the most recent tools in technology to provide transparency and allow for better information channels for regulators, consumers and industry professionals. The CFPB's initial focus will be mortgage disclosures and credit cards. The bureau will be watched closely in 2011 as it establishes its footprint among the regulators.

The new law also addresses qualified residential mortgages, risk retention, credit rating agencies, originator compensation, underwriting requirements, a plan to end the "too-big-to-fail" concept and appraisal practices. Many of these topics will spark heated discussions in Congress and among industry stakeholders and regulators in 2011.

Title IX (risk retention and qualified residential mortgages provisions), Title X (CFPB) and Title XIV (Mortgage Reform and Anti-Predatory Act) are of particular interest to the mortgage community.

The American Bankers Association stated that while the pages of the act are daunting, they will set in motion a regulatory implementation process several times greater than the statute. **Edward Yingling**, president and CEO of the ABA, put out a statement in early 2010 that he is concerned the Dodd-Frank Act will result in more than 5,000 pages of new regulations for traditional banks.

"Congress consistently underestimates the complexity and size of the regulations resulting from new laws," Yingling said. "Traditional banks are already being crushed by existing regulations, including 50 new or expanded regulations in the last two years. Adding 5,000 pages of new regulations to even the smallest banks, which had nothing to do with the financial crisis, constitutes a massive overkill."

AN EYE ON RESPA IN 2011

If new regulations and developments under RESPA caught your attention in 2010, they will certainly keep you just as busy in 2011, according to several legal and mortgage experts who spoke to *RESPA News* about what they are expecting from the regulators this year regarding changes and enforcement on the RESPA front.

According to **Phil Schulman**, a partner of K&L Gates in Washington, D.C., 2010 was a huge year for RESPA, primarily because of the implementation of the Department of Housing and Urban Development's (HUD) mandated, standardized Good Faith Estimate (GFE) and HUD-1 Settlement Statement forms. While he acknowledged that "lenders have come to terms with the forms," he said issues continue to surface.

"There are still a number of issues where the instructions and the frequently asked questions don't really guide you to an answer. The investors are more touchy than the originators in terms of issues that I would consider to be immaterial or certainly ones that don't affect the viability of the loan. You'll see investors unwilling to purchase the loans because there's a $12 mistake on a GFE. That frustration is still out there," Schulman noted.

Warehouse lending

One of the more challenging and controversial RESPA issues to contend with in 2011, is HUD's recent interest in gathering information on warehouse lines of credit. In November, HUD announced it is considering issuing guidance under RESPA to address possible changes in warehouse lending and other financing mechanisms used to fund federally related mortgage loans.

"I see the warehouse lines of credit issue being a very high priority for lenders, perhaps the highest priority," Schulman said. "The warehouse lines of credit issue is huge because the traditional warehouse lines of credit have evaporated. Lenders or banks that provide financing do so through repurchase agreements and these are different from the traditional warehouse lines. The issue becomes whether or not they are truly a secondary market transaction. I think we in the industry believe that they operate like a true warehouse line of credit and therefore should be exempt from RESPA."

Kevin Breeland, general manager of Residential Mortgage of South Carolina LLP and chairman of the Real Estate Services Providers Council Inc.'s (RESPRO) board of directors, said warehouse lending is on his radar and he will be following the issue in 2011.

"Reading the questions for comments leads me to believe HUD is reviewing the warehouse lending practice and what, if any, parts fall under RESPA compliance. This seems to be a new arena for HUD and that should be cause of concern by the industry. Stay tuned for that process," Breeland said.

Jeff Arouh, a partner of Holland & Knight in New York, agreed that this issue will be scrutinized in 2011, but said it is uncertain what will become of HUD's efforts surrounding it.

"There are a couple of tricky areas that have been hanging around out there involving both HUD and RESPA, some of which have received lip service, some of which are subject of increase focus right now. One that is clearly the subject of increased focus is the issue relating to the secondary market, warehouse lines and whether the issuers of warehouse lines can or should be regarded as lenders for RESPA purposes," Arouh said.

It is uncertain whether or not HUD will act quickly on the public comments and issue guidance or new regulations in the first six months of 2011 or hand the issue over to the new Consumer Financial Protection Bureau (CFPB) when it begins overseeing RESPA and its regulations in July.

"I don't know whether HUD will be able to develop something that they are comfortable with [within the next three months]. I don't know if [the public comments] can be gathered and put into regulations quickly enough for something to come out within the next couple of months," Arouh noted.

Rich Andreano, a partner of Patton Boggs in Washington, D.C., believes HUD will try to finalize the issue before the transfer goes into effect, and commented that this is not just a HUD issue, therefore if nothing develops from it within the first half of the year, it is possible that the CFPB will address it.

"From what I understand, it is not so much a HUD issue, but more so pushed by the Federal Deposit Insurance Corp. and HUD decided to step in and provide some guidance in this area," Andreano said.

Employee transfer

By July 21, 2011, the CFPB is to have full oversight over RESPA and its regulations. In addition, the transfer of RESPA functions and employees from HUD's Office of RESPA and Interstate Land Sales needs to have taken place. While Washington, D.C., sources close to *RESPA News* indicate they expect a complete transfer of all employees from HUD's RESPA office to the new CFPB, neither the CFPB nor HUD have officially

announced details of the transfer.

"There is a presumption that the people in the RESPA office would move, but the people in the general counsel office would not," Andreano said. "But then I heard there really was no decision made."

Andreano said although many industry members have not always agreed with HUD on RESPA matters, "the industry certainly understands the importance of institutional knowledge and it would be helpful if a number of people at HUD would make it over to the bureau."

"It's important that whatever decisions they make be enforced by the history and the thinking of HUD in the past so that you can appropriately weigh pros and cons of the various paths HUD chose to go down or HUD chose not to go down. That's helpful. That's important," Andreano said.

New disclosures already?

Already in motion at the CFPB under the leadership of Treasury Secretary **Timothy Geithner** and Special Advisor **Elizabeth Warren** is the effort to combine the GFE and Truth in Lending consumer disclosure forms.

While the CFPB has until July 21, 2012, to issue a proposed disclosure form, Schulman said it is possible a new form will be proposed before the end of 2011.

"I wouldn't be surprised if out of the first quarter that they're in business we see at least a draft put out for public comment," he said. "I think they're going to be active. It wouldn't surprise me if they hit the ground running and that's one of the first issues they address. I think we're going to see something on that very quickly."

Andreano said combining and simplifying the two forms under the existing RESPA and Truth in Lending Act statutes will be an intricate task for the CFPB.

"It's hard to simplify disclosures when the rules governing the disclosures are very complex. And that's the problem with Truth in Lending. The rules are very complex both for mortgages and other credits. There is only so much they can do within the confines of the existing statutes," he said.

Is HUD passing on required use?

In 2010, HUD continued its efforts to address RESPA's required use provision when it issued an Advanced Notice of Proposed Rulemaking on June 3. In the proposal, HUD sought answers from the industry to questions surrounding improper uses of affiliated business arrangements. More specifically, it wished to address the ongoing debate on whether or not homebuilders should be allowed to offer consumers incentives when the incentives are tied to the use of the homebuilder's affiliated business.

"It's hard to simplify disclosures when the rules governing the disclosures are very complex. And that's the problem with Truth in Lending. The rules are very complex both for mortgages and other credits. There is only so much they can do within the confines of the existing statutes."

-Richard Andreano

Partner, Patton Boggs

"Interesting that we haven't seen anything yet," Andreano commented. "They still have time to come out with a proposed rule between now and July 21, but they would have to move relatively quickly."

Schulman said if he had to "venture a guess" he thinks HUD "will punt on" the issue, turning it over to the CFPB.

"It's an issue that is extremely controversial. It's questionable from a legal perspective as to whether or not HUD would have authority to single out a particular group of providers and claim that they would be prohibited from providing incentives to their customers to use their affiliated businesses, where as other providers would not be," he said. "Quite frankly, I was surprised HUD even put the notice out given the fact that there were lawsuits the last time this was attempted."

Final notes

Schulman said HUD showed signs of increased enforcement recently and will likely continue these efforts in 2011.

"They'll continue to both close out cases that they presently have ongoing and probably up until beginning of summer, take on new matters," Schulman said. He cautioned industry members that the CFPB will likely make a statement early on that they "mean business" regarding enforcement. He suggested mortgage, title and settlement services professionals take due diligence in terms of control mechanisms or "whatever they need to make sure that they're not a headline for a new enforcement story coming out of a new agency."

Arouh said the absorption of HUD into the CFPB presents an opportunity for the government to look into RESPA and see where it's working, where it's not and potentially take steps to rectify some problem areas. "It's a potential. Is it going to happen? I haven't the foggiest notion. But certainly we've heard people talking about things that are wrong, things that need curing, things that need addressing," he said. One area Arouh hopes to see addressed is RESPA as it relates to the use of technology in the industry.

HOMEBUILDERS FACE LONG ROAD AHEAD DESPITE MODEST GROWTH IN 2010

David Crowe, chief economist for the National Association of Home Builders (NAHB), summed up 2010 from a homebuilding perspective while discussing single-family housing starts during a housing outlook Web presentation.

"We've increased 26 percent from the bottom of early 2009, which sounds nice until you look at the level we increased from," he said. "It's hard not to make substantial increases from a bottom, but this year in total will only be marginally better than [2009]."

The NAHB forecasts a 37 percent increase in single-family starts for 2011 and a 48 percent increase for 2012.

He and other analysts on NAHB's Construction Forecast Conference Webinar expected a much larger increase coming out of the recession in June 2009, but other than a slight bump in activity thanks to the homebuyer tax credit, the recovery came slowly. Crowe expects only 3 percent to 3.5 percent economic growth by late 2011 and into 2012 this time around, which is minimal considering the dramatic depths of the downturn.

"Housing grew at a much greater rate than the overall economy [in other recessions], sometimes three times more than the overall economy," Crowe said during the Webinar. "It was a leader. It caused overall GDP to grow. This recovery, housing just isn't doing its part. GDP isn't either, but that's partly due to housing."

The large glut of foreclosures adds to the troubles of the homebuilder segment. For one, they flood the market and attract potential homebuyers with their low prices. This hurts homebuilders by driving demand for new homes down, and at the same time, diminishing the homebuilders' pricing power, according to Crowe.

Combining the foreclosure issue with production cuts, reduced inventory and declining house sizes (10 percent decline), homebuilder confidence remains low. However, **Eric Belsky**, managing director for the Joint Center for Housing Studies at Harvard University, looked at the homebuilder production cuts as more of a market correction at this stage. The steep drops in production, according to Belsky, put production back in line with 10-year trends.

"If you're looking at the [total housing production] number in the mid-2000s, it's well above trends for an extended period," he said. "And the reason is that was a period of building ahead of any level of sustainable demand for new homes, but as a result of the sharper cuts, [production] is close to back in line with those 10-year production trends and sometimes below."

Positive trends

The Housing Opportunity Index puts housing affordability at 70 percent, showing that eventually, low rates should have a positive impact on potential buyers.

Crowe also said there's evidence of pent-up demand because the nation is behind in household formations. "We've got a lot of people right on the edge that didn't move out, got a roommate or lived in a dorm. But there are many reasons why they will soon form a household," Crowe said. "Those are the people that will begin to absorb the pipeline."

On Standard and Poor's (S&P) U.S. Commercial Real Estate Update Web presentation, S&P senior economist **Beth Ann Bovino** said private nonresidential construction is still weak.

"Commercial construction won't see a major improvement until job creation boosts demand for office space and retail. … And since store construction is tied to housing development, we expect soft retail construction into next year," she said.

Multi-family made a "decent rebound," according to Crowe and ended up compensating for some the single-family segment's shortcomings.

Employment

Fortunately, the jobs picture may be brightening. **Maury Harris**, managing director and chief economist for UBS Investment Bank, said he expects to see more jobs added in the near future because banks are starting to ease their lending standards, and when banks ease lending standards, jobs increase.

Harris said lending standards were beginning to ease because of competition among banks. "The problem is loan demand has been weak," he said. "If you want to increase the growth of your company and your output, you have to increase market share, and that's where competition comes in, and banks are starting to ease lending standards as a result."

There's a relationship between banks' lending standards and small business payroll.

"The small business community will be less concerned about incremental taxation and more confident about policy in Washington, D.C., and we should see an increase in confidence as a result,"

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REAL ESTATE

REAL ESTATE SALES REMAIN FRAGILE IN LIGHT OF EMPLOYMENT NUMBERS

Uncertainty continues to plague the real estate industry, as experts contemplate stubbornly persistent unemployment rates, undiminished foreclosure inventory and an overall economic pessimism throughout the country.

Given such challenges, it may surprise you to hear that some experts are becoming more optimistic about the future of the housing market.

At the State of the Real Estate Industry forum during the National Association of Realtors (NAR) 2010 Realtors Conference and Expo, experts were reportedly cautiously optimistic about the current state of the real estate industry and its future. Some of the experts think that the housing market has increased opportunities for buyers right now. They say that these new opportunities such as lower mortgage interest rates and more stable pricing are opening the way for new homebuyers.

At the same time, some experts are saying the foreclosure crisis continues to bog down the housing market.

On Dec. 2, NAR published its Pending Home Sales Index. The Pending Home Sales Index is NAR's forward-looking home sale indicator. The release stated that home sales took a positive upturn in October. According to the index, October home sales rose 10.4 percent compared to September's index. However, October's numbers are still 20.5 percent lower than they were at the same time last year.

In a news release, **Lawrence Yun**, NAR chief economist said, "It is welcoming to see a solid double-digit percentage gain, but activity needs to improve further to reach healthy, sustainable levels. The housing market clearly is in a recovery phase and will be uneven at times, but the improving job market and consequential boost to household formation will help the recovery process going into 2011.

"More importantly, a return to more normal loan underwriting standards and a removal of unnecessary underwriting fees for very low risk borrowers is needed and could quickly help in the housing and economic recovery," Yun continued.

He indicated that he expects home sales to continue to rise. "Even so, we now have some consumer concerns regarding the mortgage interest deduction, an important component in housing affordability," he said.

"Preliminary results of a new survey show nearly three out of four home owners and two out of three renters consider the mortgage interest deduction to be extremely or very important to them. Home owners already pay between 80 and 90 percent of all federal income taxes and additional tax burden would hurt them and the economic recovery, so we have a reasonable hope that it will not be changed," he continued.

According to industry experts, one of the problems that could persist well into 2011 is that the number of people who are able to obtain a mortgage is being limited by strict credit policies and joblessness.

NAR reports that two of the nation's largest mortgage lenders have raised their minimum required credit scores approximately 20 points. According to NAR, placing a high limit on credit scores will delay the housing market's rebound,

Pending Home Sales Index for 2010

Month	Index
Jan.	90.2
Feb.	97.7
Mar.	104.6
Apr.	110.9
May	77.7
June	75.5
July	78.9
Aug.	82.4
Sept.	80.9
Oct.	89.3
Nov.	92.2

Data Source: National Association of Realtors

and NAR is urging mortgage lenders to change their policies so that qualified homebuyers can access credit.

"It used to be if you had a 620 credit score, that was a good score. You used to get a mortgage fairly easily with the right amount of money, but now you can't even really do that with an FHA. So that has been an issue and will continue to be a big issue. That will be one of our biggest issues going into next year, dealing with the credit markets," said **Ken Trepeta**, director of real estate services for NAR.

"It's kind of schizophrenic — on one hand you have people in the government talking about the need for banks to lend, and on the other hand they're telling us you can't do anything risky. Well, there's a line there. There's a risk line. To lend more you have to cross the risk line a little. So you can't really do both. You can't lend more and be safer. That's something we're going to have to get our hands around and there's more coming," he continued.

One of NAR's concerns is that otherwise qualified buyers are unable to acquire a mortgage because the credit rates have simply become too restrictive. This, in turn, is slowing the housing market's recovery.

NAR claims that the lending practices currently in place are so strict that prospective homebuyers who could budget and successfully own a home cannot do so. The association says that it is urging the Federal Housing Administration (FHA), Fannie Mae and Freddie Mac to review their credit policies regularly to help ensure that otherwise qualified homebuyers will in fact be able to attain home mortgages.

High unemployment rates also continue to hinder the housing sales market, NAR said. Without a regular source of income, it is difficult to acquire a mortgage. NAR said the recovery of the housing market truly depends on job availability.

"I think the main factor is — sales will improve as long as the economy improves and as long as the regulators don't go overboard any further. And there's potential for that," Trepeta said.

"We're not going to return to the days of the easy sale anytime soon," Trepeta said. "If the economy rapidly improves, there will be improvement there, but I still think there's a lot to get used to and each transaction is going to seem like it's harder than what people were used to, even in a prior normal market."

In November, the United States Department of Housing and Urban Development (HUD) published its third quarter U.S. Housing Market Conditions data. "For the third quarter of 2010, housing indicators showed that the recovery in the housing market continues to remain fragile," HUD said.

According to HUD's numbers, the production of new houses and the sales of homes both fell. HUD also found that the prices of homes remained the same. The national homeownership rate has remained the same in the second and third quarters of 2010. However, that rate is down from last year. In addition, the homeownership rate for minorities has decreased 1.3 percent from last year, HUD said.

"The decline in homeownership reflects the subprime lending crises, the high rates of unemployment, and the recent severe recession," HUD commented.

"Servicer emphasis on home retention actions, including those actions under the Making Home Affordable Program, are helping to keep the number of newly initiated and completed foreclosures down, despite high rates of mortgage delinquency," HUD continued.

"These programs cannot help all delinquent borrowers, however. In this regard, servicers have indicated that completed foreclosures are likely to increase as alternatives for seriously delinquent borrowers are exhausted," the report concluded.

U.S. Homeownership rates for 2010

1st QUARTER	Latest Q	Previous Q	Same Q / Previous Year
All households	67.1	67.2	67.3
Minority households	49.5	49.8	49.5
Young married-couple households	58.8	60.4	59.5

2nd QUARTER	Latest Q	Previous Q	Same Q / Previous Year
All households	66.9	67.1	67.4
Minority households	49.0	49.5	49.7
Young married-couple households	57.7	58.8	59.3

3rd QUARTER	Latest Q	Previous Q	Same Q / Previous Year
All households	66.9	66.9	67.9
Minority households	48.6	49.0	49.9
Young married-couple households	58.6	57.7	60.2

Data Source: HUD

MORTGAGE

MORTGAGE INDUSTRY FACES QUAGMIRE OF UNCERTAINTIES

Economists agree the general outlook is a little brighter for 2011, with GDP expected to improve and the job creation engine already cranking in some areas of the country. But as some economists have pointed out, it just isn't happening fast enough to counteract the depths of the recession.

"The past year has been one of disappointingly weak recovery, and, sadly, we expect that 2011 will bring more of the same," concluded **Bill Witte**, associate professor emeritus of economics at Indiana University and a member of the Kelley School of Business' annual Business Outlook Panel.

"The watchword for the economy going into the New Year is uncertainty — uncertainty about the political climate; uncertainty about taxes; uncertainty about commodity prices; uncertainty about Fed policy and interest rates; uncertainty about the dollar," Witte added. "Until some of this uncertainty is removed, the prospects for a robust recovery will remain dim."

Witte, who also co-directs the Center for Econometric Model Research at IU, remarked that the U.S. economy has been a model of "diabolical consistency." In 2008 and the first half of 2009, it produced the worst recession since the Great Depression. Since then, it has produced the worst recovery since World War II.

Nowhere is this uncertainty more evident than for the mortgage industry. Lenders continue to face a complicated clean-up process on many fronts, but if there is any hope to be had, some experts are finally expressing some belief that 2011 could be the turning point, the industry has been waiting for.

Even if the economy sees some improvement in 2011, the mortgage industry still faces a lot of unanswered questions that could continue to impact a more robust recovery:

- What effect will the Dodd Frank Act regulations have on the lending industry's ability to provide a broad range of mortgage products?
- Will the sales force (the mortgage brokers) be allowed to reenter the market place in significant numbers or will broker compensation requirements under Dodd Frank Act kill the profession entirely?
- Will the GSEs survive congressional wrath and if not, will mortgage backed security investors return to the fray in substantial enough numbers to return liquidity to the lending industry?
- Will home values return to some sense of normalcy so that homebuyers can enjoy enough equity to refinance when needed?
- Will ultra-conservative underwriting standards loosen enough to let some potential homebuyers back into the marketplace?
- Will we finally see the foreclosure pipeline ease up?

From Main Street to Wall Street to the Capitol, the mortgage industry is destined to battle its demons on every front in 2011.

Wall Street

The mortgage industry has struggled to restore investor confidence to the mortgage markets over the last two tumultuous years, shoring up underwriting processes, eschewing the mortgage broker industry for the more controllable in-house loan officer, and returning to the most conservative of home lending products.

But investors remain wary and with Fannie Mae and Freddie Mac struggling with their own clean-up, funds remain tight, and the future of the GSEs questionable.

And that takes us to Capitol Hill.

Capitol Hill

The fate of the GSEs is high on the Congressional agenda in 2011, at least in some quarters. Rep. **Spencer Bachus**, R-Ala., who has been named chair of the House Financial Services Committee for the 112th Congress, has been outspoken in his discontent with how the reformation of the GSEs is going and will undoubtedly make this a top priority when the committee convenes in January.

Specifically, Bachus has expressed some irritation over the pace of the reform actions. On Sept. 15, he called for a legislative hearing to discuss a Republican plan that would end the bailout of the two entities.

"During the two years that Fannie Mae and Freddie Mac have been controlled by the federal government, House Republicans have introduced a number of measures to immediately address the failures of the GSEs," he stated in a recent committee hearing. "We have released a detailed set of principles to protect taxpayers from further losses and future bailouts, and we have suggested ways to build a more sustainable housing finance system based on private capital. We offered amendment after amendment during the regulatory reform conference to end the GSE bailouts and to wind down Fannie Mae and Freddie Mac. The Democrats rejected every one."

Look for this contentious issue to heat up Congressional hearings in 2011, and for mortgage funding to remain uncertain until the issue is resolved.

The Republicans have also vowed to take on the Dodd-Frank Act, promising to take the Act through a chapter by chapter review and propose legislative remedies to any portion that they deem to be damaging to businesses.

Main Street

According to the Mortgage Bankers Association commentary in December, the year ended on a more positive note with the revised GDP growth numbers up and an indication that consumer spending was on the rise. Business spending for capital goods was also up, although that growth slowed in the last few months somewhat.

"Despite these positive signs, unemployment and labor underutilization remain high," the MBA noted. "We expect that the unemployment rate will remain above 9 percent in 2011, and over 8 percent in 2012."

The MBA reported that purchase applications increased modestly in November, but remained at relatively subdued levels. Existing home sales dipped slightly in October following a September increase, as did new home sales. Both home sales measure remain close to historical lows.

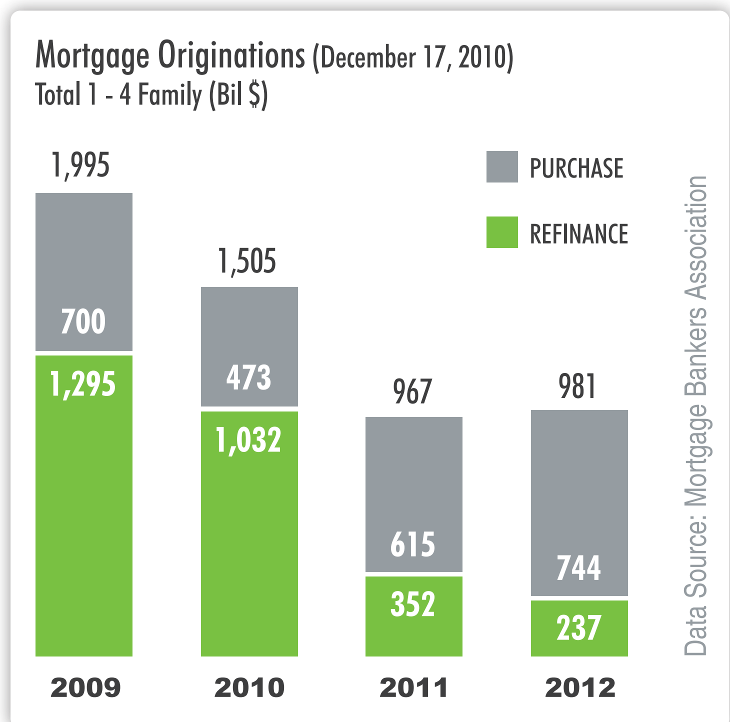
"We expect declines in refinance activity will be the primary factor impacting our originations forecast for the next year, with total mortgage originations decreasing to $967 billion in 2011, the lowest level of originations since 1997," the MBA predicted. "An increase in purchase originations will not be enough to offset a sharp drop in refinances, stemming from mortgage rates climbing to 5.5 percent by the end of 2011. We expect that the refinance share of originations will drop from 69 percent in 2010 to 36 percent in 2011, and then 24 percent in 2012 as rates climb above the 6 percent mark."

Even if originations don't improve, the overall debt situation in the United States is destined to improve, according to TransUnion, hopefully creating more credit worthy borrowers for new mortgage and refinance products.

TransUnion's annual forecast, released in late December, indicated that national mortgage loan delinquencies (the ratio of borrowers 60 or more days past due) will drop nearly 20 percent by the end of 2011 to 4.98 percent from an expected 6.21 percent at the conclusion of 2010. The projected decrease in 60-day mortgage delinquencies, a statistic generally considered a precursor to foreclosure, would more than double the 9.87 percent yearly decline that is expected between the end of 2009 and 2010 (from 6.89 percent to 6.21 percent). According to TransUnion, this is a welcome contrast to the year-over-year increases of 54 percent between 2006 and 2007, 53 percent between 2007 and 2008 and 50 percent between 2008 and 2009.

"We believe the nation will experience an improvement in mortgage delinquencies during 2011," said **Steve Chaouki**, group vice president in TransUnion's financial services business unit. "This will be driven by a slowly improving unemployment picture and continued stabilization in housing prices. While there is continued price pressure in many markets, we expect a growing number of areas of the country to experience a rise in property values along with some stabilization of values in those states and markets hardest hit by the recession."

TransUnion also released national year-end 2011 credit card delinquency rate forecasts (the ratio of bankcard borrowers 90 days or more delinquent on one or more of their credit cards) that indicate consumers will experience a 10.67 percent decline from a projected 0.75 percent delinquency rate at the end of 2010 to 0.67 percent at the conclusion of 2011. The projected 90-day credit card delinquency rate at the end of 2011 would mark a 50.7 percent drop from the beginning of the Great Recession (1.36 percent in Q4 2007) and constitute the lowest number since 1995.



APPRAISERS LOOK FOR BRIGHT FUTURE IN 2011

After a year of suffering the "unintended consequences" of the Home Valuation Code of Conduct (HVCC) and more declining volumes in the mortgage market, the appraisal industry saw lawmakers make changes that reinforce appraiser independence and address the new norm in appraisal ordering, mostly involving appraisal management companies (AMCs). But it is uncertain how that will impact appraisers and what it means for the future. Read on for the issues that will be at the forefront of 2011.

At the start of 2010, the predictions for the coming year were much the same as the previous one: more woe in the markets, leading to a decrease in volume for residential mortgage loans, more regulatory and legislative changes that could affect the appraisal industry, and the continuation of the trend of AMCs increasing their share of appraisal orders. In other words, business as usual.

No one could have predicted that 2010 would have been so eventful. Last year saw the biggest reforms to the regulatory structure of the appraisal industry in more than a generation, including the sunsetting of the controversial HVCC. There was also the public spat between the Appraisal Institute and The Appraisal Foundation. And new technology enabled alternative valuation products to greatly expand its foothold in an otherwise crowded marketplace.

So what does this mean going into 2011? If last year saw the seeds of change, this is the year that the seeds come to fruition.

Regulatory changes

The dominant determiner of change will be the continued implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the landmark bill that reformed the financial and mortgage markets and introduced a new wave of appraisal independence legislation.

The Dodd-Frank Act contains many provisions that are designed to strengthen the independence of an appraiser and the quality of the appraisal report. Most notably, the act mandates the payment of a "reasonable and customary" fee for an appraiser. The debate over the definition of these terms became increasingly heated as each side looked for further meaning in the wording in the documents. As it currently stands, what constitutes reasonable and customary can best be understood by looking at the fee schedule of the Department of Veteran's Affairs, which has long been seen by appraisers as the best agency to work under.

But the many favorable provisions of the Dodd-Frank Act will essentially be ignored if there is not adequate implementation, adoption and enforcement of the bill. And while the ultimate responsibility for the enforcement of the Dodd-Frank Act lies with the new Bureau of Consumer Financial Protection, the reality is that state agencies are expected to be at the forefront of all enforcement efforts, specifically related to the mandatory reporting section of Dodd-Frank.

Whether their proposed budget increases will be able to cope with potentially hundreds or thousands of new cases is another matter. Considering the well-publicized difficulty that many states have had with enforcing current legislation, it is unlikely that enforcement will be as effective as hoped by the lawmakers, meaning that the collective hope that came about with the passing of the Dodd-Frank Act could be extinguished by this time next year.

Other regulatory changes include the Interim Final Rule, issued by the Federal Reserve Board and the much-anticipated Interagency Guidelines, which were finally issued in December after what seemed like an interminable comment period. The new guidelines expanded the original nine pages of the 1994 version into a 70-page document that spells out what is expected from financial institutions that use appraisal services.

It focuses on the same appraisal-related themes as the original: minimum standards, independence, development and evaluations. But for the first time, they provide guidance for how financial institutions should use automated valuation models (AVMs) as well as other analytic tools and techniques, and that procedures need to be established for working with AMCs. Like the Dodd-Frank Act, the Interagency Guidelines are proactive in demanding that the users of appraisal services take a closer look at their methods and procedures, particularly when working with AMCs.

Legal challenges

There is no doubt that the AMC business model, which saw such explosive growth since the introduction of the HVCC, is now an established part of the appraisal industry. As an appraisal reviewer told *Valuation Review* earlier this year, AMCs "are now part of the fabric." Indeed, many companies enjoyed record profits as AMCs' market share of appraisal ordering reached almost 80 percent.

But as AMCs enjoyed a greater public profile, they also experienced the

downside of having greater visibility. Increasingly, AMCs are being dragged into lawsuits launched by aggrieved homeowners or borrowers looking for someone to blame for having an artificially inflated value put on their home. Rather than going after the appraiser, who could be retired or bankrupt, or is just likely to have little money themselves, the borrowers are realizing that the AMC carries just as much responsibility in the process as the appraiser, but has far greater funds. Expect to see more cases involving AMCs in the coming year.

In other litigation news, 2010 was dominated by the actions of the Federal Deposit Insurance Corp. (FDIC). The federal agency was looking to recoup its costs after taking over hundreds of failed banks by launching a series of lawsuits against appraisers alleged to have artificially inflated the values of properties. According to leading appraisal legal experts, the FDIC will continue to be the main source of appraisal-related lawsuits in 2011. They advise all appraisers to make sure their insurance is current and contains extended coverage.

Stability ahead?

Ultimately, the health of the appraisal industry is entirely dependent on the state of the housing market. According to the Mortgage Bankers Association, mortgage origination volume declined about 30 percent in 2010, with a similar decline predicted for the coming year. One of the reasons given for this decline was the expiration of the homebuyer tax credit, which had provided a much-needed shot in the arm for the moribund market. Without incentives such as these from the government the market is likely to remain stagnant.

Yet some housing experts predict 2011 will see stability return to the market. As ever, the answer lies on a local level, as values fluctuate wildly from city to city and state to state. Veros Real Estate Solutions, a provider of risk management and collateral valuation services, released its forecast for 2011, which showed slight but appreciable gains in most of the major metropolitan statistical areas.

Veros said that most of the Midwest and Texas would continue to see positive appreciation of property values, especially compared to recent years. But the West and Florida, arguably the poster child of the foreclosure crisis, will continue to be hard hit. Estimates suggest that California, Nevada, Idaho and parts of Washington and Oregon continue to have a weak outlook.

Despite these predictions, the wild card remains the foreclosure rate and the corresponding shadow inventory. Without any real sense of how many foreclosures are on the books of national lenders, there is a collective holding of breath throughout the mortgage industry as it braces itself for what could potentially drag the housing market back down. It is believed that this year will see the majority of the shadow inventory come into the light, finally giving experts the data they need to accurately forecast the housing market.

Improving business prospects

While the state of the housing and mortgage market is of understandable concern, for independent appraisers, the most pressing need is to diversify the client base. At a recent appraisal conference, the message from one speaker was stark: those appraisers whose clients are solely in the residential mortgage loan arena will be out of work in the next five years. “Diversify or die,” he advised. Those who are able to adapt will be best placed to survive these challenging times. It is time for appraisers to think outside the box.

One way of doing this is to offer alternatives to a traditional 1004 appraisal. This year saw such alternative products, often a combination of automated valuation data, regression analysis and the human touch of a licensed appraiser, really take off. For example, software provider Bradford Technologies’ Collateral Valuation Report (CVR) has already been adopted by national lender U.S. Bank and leading appraisal firm Forsythe Appraisals. Appraisers using these products find themselves completing, on average, three or four reports in the time it takes to do one traditional URAR, albeit at a cheaper rate.

The rise in use of alternative products is being driven by the demand for faster and more accurate valuations by the wide array of clients, including lenders, servicers, insurance companies and more. Alternative products are the appraisal industry’s answer to broker price opinions (BPOs). Although Realtors have been using this product to supplement their income for a number of years, in the foreclosure mess, many servicers wanted quicker and cheaper valuations than a traditional appraisal. 2011 will see the battle between BPOs and appraisals continue in much the same manner, but it is hoped that appraisers will have better tools than ever before.

But do alternative products represent the future of appraising? While it is perfectly feasible that their popularity will keep increasing, it is almost impossible to conceive a time when there is no need for a full, traditional appraisal. In 2010, a year of anxiety and uncertainty, the emphasis was on greater accuracy and quality in appraisals. This will continue in 2011, with extra focus on the professionalism and experience of the appraisers themselves. Buffeted by the ill winds of the economy and threats from other areas of the real estate industry, residential appraising would be in far worse shape than it is without the dedication and application from the core professionals that form the structure of the industry. It is solely to their credit that the outlook for 2011 remains bright.

TITLE INSURANCE

2011 OUTLOOK REMAINS MURKY FOR TITLE INDUSTRY

The outlook for the title insurance industry in 2010 contained concerns about the overall health of the market. Would the homebuyer tax credit provide any substantive momentum? Would the recovery finally get underway?

The answer was a resounding: "Um, kind of, but not really." The tax credit was more like a Band Aid on a severed limb, and the robo-signing scandal took the wind out of foreclosure sales, but the U.S. economic recovery did slowly take root. Senior economist for Standard & Poor's, **Beth Ann Bovino**, estimated 2.8 percent economic growth at the end of 2010 during a year-end Web presentation.

2010 now gives way to 2011, and 2011 looks like it will maintain a similar trajectory — slow economic progress and a weak housing market, which sets up the title industry for another lackluster year of business.

In its title industry report, Fitch Ratings maintained a negative outlook for the sector's credit rating because there's "no clear catalyst for change in the near term," which is consistent with the firm's 2010 rating.

Gerry Glombicki, director at Fitch, said it's near impossible to have a different outlook for the sector with the mortgage originations projected to fall under $1 trillion.

"One of the concerns Fitch has is [originations] are going down. 2011's forecast is gloomy," he said. "Companies already have been in a retreat mode with expenses. They've done the simple stuff, like limit travel. They've certainly reduced staffing. But now the question is do you have to do level three or four cuts? And how do you cut without cutting the bone? You have to reduce expenses in line with your revenues, but not do it where it's so deep that it's irreversible, but so deep that you can match the revenue fall. And that is going to be a challenge for industry players in the near term."

Company performance

The big picture is only one way to judge industry performance. Fitch currently has negative outlooks for First American Financial, Old Republic International Corp. and Stewart Information Services Corp. and a stable rating for Fidelity National Financial. Fidelity has a stable outlook because its BBB- credit rating is the lowest of the major underwriters, and the firm doesn't believe the company is at risk of being downgraded further. The BBB- rating is also the lowest rating a company can have and still be considered investment grade by Fitch.

In terms of profitability, the combined ratios of the major underwriters for the third quarter of 2010 were:

- Fidelity 95.3 (profitable)
- First American 95.4 (profitable)
- Old Republic 102.2 (not profitable)
- Stewart 101.5 (not profitable)

"As a whole for the industry, we're cautiously optimistic," Glombicki said, based on the third quarter earnings results. "We saw companies improve, like Stewart, and some step back, but not in a meaningful way."

The title industry overall had generated an underwriting profit in 2010, largely driven by the efforts of the two biggest companies — Fidelity and First American — which now comprise about 76 percent of the industry's operating revenues.

According to Fitch, the two companies' ability to shrink expenses amid top line pressures is the primary driver to the title insurance sector's profitability during downturns.

Fitch also believes that continued negativity in the market could ultimately lead to industry consolidation among small underwriters in order to create cost efficiency.

Joseph Petrelli, president of DemoTech, said he found the loss results of the industry to be a bit of a surprise in 2010.

"It looks like companies are paying the price for short searches," he said. "I was kind of hoping that the loss experience would not deteriorate as far as it did."

According to Petrelli, the loss results ramped up because of defalcations and a jump in minor claims — both of which are side effects of the weakened housing climate. When business is down, there's typically a rise in smaller claims and defalcations because organizations are tested financially, and a higher percentage of people seek alternative options for relief.

"There's been a relatively fair amount of claims activity, and outside of defalcations, they've been relatively small claims, which tells me it's nickel-and-dime stuff," he said. "The defalcations, as business coasted down over the last few years, were fairly predictable because that's part of the business cycle. But I think that defalcations on top of the smaller nickel-and-dime claims is what's contributed to the loss experience."

Petrelli identified short searches as the main culprit in the increase of smaller claims.

The market

So, what's out there now? The story

that developed after the homebuyer tax credit expired was the boom of refinance activity. That activity might remain, but it's more likely refis will drop in 2011 because of rising rates, which isn't necessarily terrible news for the title industry, considering the modest premiums they generate.

There is one chance for a "mini-spike" in refinance activity though, according to **David Townsend**, president and chief executive officer of Agents National. The reason is five- and seven-year ARMs that were popular during 2001 to 2006 are due to be reset.

"A lot of those people did not refinance because they were paying a lower rate than when they originated the loan," he said. "With rates ticking back up, I could see a lot of those people hoping to refinance or lock in a permanent rate."

The most abundant work available is expected to remain real estate owned transactions and short sales.

"With about 11 million households underwater, REO and short sale volume will remain strong in 2011," said **Anne Anastasi**, president of Genesis Abstract LLC and current president of the American Land Title Association. She also said there's the possibility for an uptick in purchase originations, despite the negative forecasts, which would be driven by modest increases in home sales and stabilizing home prices.

Petrelli said whether it's refis or REO sales leading the way, title agents shouldn't be pursuing short searches in these market conditions.

"You're either getting less premium to do the same job, or you're getting the appropriate premium but know that the real property is likely to have more problems associated with it than is typical. Those are things that indicate the industry can't be doing short searches because there's not enough money on the refinance side, and there's more problems than ever on the foreclosure and REO side," he said.

E-remittance standard

At press time, the Mortgage Industry Standards Maintenance Organization (MISMO) was close to finalizing its latest standards update — version 3.1 — and technology experts believe some of the new software standards should benefit the title industry, most notably by including more complete data reporting and a uniform e-remittance standard.

Direct open orders

	Q3 2010	Q3 2009	% change
Fidelity	711,900	568,600	25%
First American	414,800	394,600	5%
Old Republic	111,945	83,018	35%
Stewart	117,000	109,700	7%
Total	1,355,645	1,155,918	17%

Direct closed orders

	Q3 2010	Q3 2009	% change
Fidelity	408,000	438,700	-7%
First American	272,900	313,700	-13%
Old Republic	75,752	68,824	10%
Stewart	74,800	88,500	-9%
Total	831,452	909,724	-9%

Data Source: Fitch Ratings

Remitting electronically is not a new concept, and the benefits of e-remittance are obvious. Underwriters, generally, will receive and send payment faster; it saves time and manpower; and it can limit mistakes that occur when running reports manually. Software developers have been executing requests for personalized e-remittance codes in their software, but the process is disjointed because the standards differ across the industry, especially where it counts, with the major underwriters.

That is where version 3.1 of the MISMO standards could change the industry in 2011. According to **Jennifer Dumas**, senior vice president of product development for PropertyInfo Corp., a wholly owned subsidiary of Stewart Title Co., an accepted industry standard for e-remittance will remove the manual labor or high costs related to developing software export and translation routines on both sides to get the data in the proper format. It will also remove the cost of software development for the software providers to keep up with the requirements and field updates from all of the underwriters.

"Since all underwriters now have the same standard, it makes it easy for an agent to report electronically to each of their underwriters," Dumas said. "They do not have to remember how each of their underwriters need to have the data. Some agents spend hours manipulating the data from their production systems to get the data in the correct format. Once their production system has adopted the new standard, then reporting will be a piece of cake regardless of the underwriter they are reporting to electronically."

And on the underwriter side, Dumas said the standard will increase the number of agencies reporting electronically, which will reduce the cost of managing and updating their own systems.

"Having the standard and a direct integration cuts out manual labor and allows for better accuracy of data," she said. "The agent can report more timely with less manual manipulation of the file and the underwriter can get the data they need quicker and also without the costly means to get the data into their underwriter systems."

TITLE AND CLOSING AGENTS BRACE FOR THE NEXT WAVE OF LEGAL CHANGES

Those in the settlement services industry who were hoping for a respite from legal and regulatory changes in 2011 will instead see more changes as legislators and regulators across the country continue to address lingering issues from 2010 and attack new problems they see coming in the new year.

At the state level, many industry professionals are already working with their local legislators and regulators to make improvements to the regulatory structure as well as educate members of the regulatory community about the role the industry plays in the real estate transaction process.

While state issues are crucial to the title insurance industry, many in the industry will be keeping a wary eye on Washington as well, particularly where foreclosures are concerned.

Meanwhile, states have already taken their own steps to address the issues presented during the foreclosure crisis. Washington, D.C., Attorney General **Peter Nickles** issued an enforcement statement describing when the notices used to commence foreclosures in D.C. may mislead homeowners and violate the district's consumer protection law. The statement clarifies that a foreclosure may not be commenced against a D.C. homeowner unless the security interest of the current note-holder is properly supported by public filings with the district's recorder of deeds.

New Jersey Chief Justice **Stuart Rabner**, like many other state chief justices, announced a series of steps to protect the integrity of filings of foreclosures in New Jersey. His actions come after careful review of a report and series of recommendations presented to the judiciary by Legal Services of New Jersey on "robo-signing" irregularities by mortgage lenders and servicers and actions by other states.

In other states, legislatures have begun introducing legislation to address these issues. Among them is California, which introduced legislation that would modify the notice of sale for foreclosed property to warn bidders that putting forth the highest bid at the foreclosure sale does not ensure free and clear ownership of the property they are purchasing.

Understanding from the ground up

Many in the industry are paying close attention to the Title Statistical Working Group of the National Association of Insurance Commissioners (NAIC) as its members work to establish guidelines for those states that wish to use the model agent data call the group established in 2010.

The data call was created to collect information that would help states better understand the costs incurred by title insurance agents. The call is divided into four basic categories: risk avoidance, business profit, business loss and business expense. "Agents are going to have to change the way they input information into their software systems so they can get that information back out," said **Michael Holden**, national agency manager, EnTitle Insurance Co. "We've been recommending to our agents that they start changing the way they input information now so that when they have to start producing this information, it is already in their computer system."

In a survey the task force conducted to determine state interest in the data call, the group found that 12 stated that they intend on implementing the statistical plan. A few of those states even said they do not need a statutory change or rule change in order to implement the plan, and many of those states stated they will require the first submission date to be in June 2012, after having agents in their states collect data during 2011. Others stated that they would implement the act in 2013 and 2014.

The initial draft guidelines were discussed during the group's Nov. 19 call. Group members and interested parties decided that the guidelines would be divided into at least two parts, advice for those states that wish to adopt the call and suggested model language for those states that need to change their laws and/or regulations to do it.

"We don't know of any firm legislative initiative or regulatory initiative," said **Frank Pellegrini**, president of Oak Park, Ill.-based Prairie Title, noting that the guidelines suggest giving industry members three to six months to prepare for the data call. "If anyone is going to start collecting data in 2011 for 2012, I don't know if six weeks is enough time, considering what was suggested in the guidelines."

While the NAIC continues to stay busy establishing a national model for additional agent data collection, some states have taken their own steps toward gathering additional information from agents.

In 2010, Washington state established new regulations changing the way title insurance rates are calculated. The regulations state that after Jan. 1, 2012, all rates used in the state of Washington must be filed and approved before use.

Title insurers will be required to submit their rate filings to the commissioner by Sept. 1, 2011, for rates to be effective Jan. 1, 2012.

Agents in Pennsylvania are waiting for the results from a data call many were required to participate in during the first half of 2010. In February 2010, the Pennsylvania Insurance Department sent out a letter requesting data and information from 498 selected title agents (roughly 20 percent of all licensed Pennsylvania agents) by early May 2010.

Clarifying, revising, updating

Besides data-related issues, state associations and individual industry members will be working on carefully planned affirmative agendas, seeking to put state-specific legislation through that will clarify, revise and update current title insurance-related statutes.

“It’s a very pivotal time right now, and we have a chance to effect legislation and regulation across the country on a state and national level,” said **David Townsend**, president and chief executive officer of Agents National Title Insurance Co. “I know in many of the states that we operate in there is talk about legislative agendas to help bolster the industry. Now is the time to work on that to make sure that the future of the industry is preserved, and one of the ways to do that is through legislation.”

“Many states are currently looking at charging for closing protection letters (CPLs) because that is a risk that currently we take on in many states without any compensation,” Townsend added, noting this is a positive thing for the industry.

According to **Aaron Day**, director of government affairs for the Texas Land Title Association (TLTA), the TLTA is planning on addressing private transfer fee covenants, requiring notices of *lis pendens* be filed when they are indexed, establishing a statutory definition of what constitutes a removable on a mechanics lien, and allowing foreign I.D.s to prove identity.

Federal actions

According to Pellegrini, potentially the most important federal legislation for title and closing agents could be a bill introduced in Congress last year, The Borrowers’ Right to Inspect Closing Documents Act of 2009.

The law would require the lender to provide to the settlement agent the completed promissory note, deed of trust or other mortgage instrument, all items needed to complete the uniform settlement statement and the final closing instructions at least four business days before the scheduled date of settlement. This would allow the settlement agent to make the documents available to the borrower three days prior to closing.

In addition, a bill was introduced in Congress in December that, if passed, would require the Department of Housing and Urban Development to investigate the current land recording system. This investigation would, among other things, analyze the feasibility of creating a federal land title recordation system for property transfers that would “maintain all previous records of the land property without invalidating, interfering with or preempting state real property law governing the transfer and perfection of land title.”

The not-to-be-forgotten provisions of Dodd-Frank

Without question, the centerpiece of the Dodd-Frank Wall Street Reform and Consumer Protection Act is the establishment of the Consumer Financial Protection Bureau (CFPB), particularly for those connected to the mortgage finance industry. However, there are other provisions of the act that should not be looked over by those in the title insurance and settlement services industries.

One of those is the establishment of the Federal Insurance Office, housed in the Treasury. **Don Partington**, executive vice president, legal and strategic affairs, Fidelity National Title Group, the office’s responsibility will be to monitor all aspects of the insurance industry, including the impact they have on the financial system.

“It is not generally [concerned with] consumer-type insurance,” Partington said. “However, the Federal Insurance Office does have the authority to receive and collect data from all aspects of the insurance industry, so it is well within its purview for the Federal Insurance Office to ask for data from title insurers and others.”

Another provision concerns exchange facilitators. Partington noted that under Dodd-Frank, the CFPB will be required to review “all federal laws and regulations relating to the protection of consumers who use exchange facilitators for transactions primarily for personal, family or household purposes.”

The act also adds a new provision to the Truth in Lending Act regarding the timing of payoff statements. Section 129G states, “A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more than seven business days, after the receipt of a written request for such balance from or on behalf of the borrower.”

“As settlement providers, we have a number of states that dictate to lenders when you to provide payoff statements in connection with a closing,” Partington said. “Here, it indicates a federal mandate that if there is going to be a request for the payoff balance made, that it has to be answered within seven business days of the receipt of the request.”

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