

CHANGE

*Change will only occur when
it can no longer be avoided*

RMR

Our industry is facing a myriad of challenges and changes largely resulting from the implosion of the U.S. economy in 2008 and the subsequent legislation enacted to prevent a reoccurrence. Trillions of dollars in “bad” mortgages and mortgage backed securities originated during the U.S. housing boom created a worldwide financial crisis rivaled only by the 1929 depression. Since 2008, revenue and profitability plummeted throughout the title and settlement industry, and while

there has been a “recovery,” the real estate industry is by no means robust. Similar to the mortgage lending sector in the title and settlement sector, the significant disruption in transactional volume that the recession triggered also brought to light all too many compliance deficiencies that led in some instances to outright fraud, escrow fund theft and title agent defalcations. Many title agencies are no longer in business, and those that have “survived” are now facing another, if not greater challenge; namely adopting the

new standards for market conduct in order to meet more rigorous and actively enforced regulatory oversight requirements.

The “new” oversight requirements evolved from the Consumer Financial Protection Bureau created by the Dodd-Frank Legislation. Multiple Federal Agencies (e.g., the OCC, FDIC, Federal Reserve, etc.), have issued rulings that remind lenders that they are in fact responsible for the market conduct of their third party providers: title and settlement agents are but a few. Further, lenders must establish evaluation standards and put in place mechanisms for proactive management and on-going oversight of these third parties to ensure that the new consumer protection and long-standing safety and soundness requirements are being met.

The most profound change is that now not only will agents be governed and answerable to their title insurance underwriters, but they also will be overseen, monitored, and answerable to the lenders for whom they serve as third party providers. Lenders rule! Now, it will not be a matter of two or three underwriters with very similar requirements. Every mortgage company sending a loan package



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and escrow funds will need to have your agency's compliance package, and enroll your agency in their compliance program. Given this spike in compliance oversight, smart agents are wondering: What will you need to include in this program; Will each lender address the requirement uniformly; Will what's acceptable for one be valid for another; and, How will we know what is required? The answers are simple, no one knows!

Most of the major money bank lenders have, in response to these oversight and liability requirements, drastically reduced the number of title agencies with whom they are willing to utilize as their third party vendors. By restricting their networks, they restricted liability. Large National Title Agencies (LNTA) have been working feverishly for the past year plus to put in place Master Service Level Agreements to ensure that they have a continued ability to receive business and remain viable in the "new marketplace." They have embraced ALTA Best Practices as a performance baseline. LNTA's have established a compliance infrastructure with dedicated compliance officers, budgeted for implementation, and implemented process improvements necessary to: protect client Non-Public Personal Information (NPPI);

ensure IT and physical security; and safeguard escrow settlement funds.

Many have expressed concern that the role of the small independent title agency is being diminished perhaps to the point of becoming an industry "white elephant." For those agencies that have not embraced the changing requirements, and have resisted change, there truly will be no future. For those that are in the process of changing/ implementing, the questions then become: Does my agency have a chance to compete in the new market environment; What do I have to do to stay viable; Will anything that I do even make a difference; How much is enough; What is my future? Other unanswered questions include: how long will I have to meet the new standards; how will they be enforced; and how will I know if what I have done is "good enough?"

Doing nothing is not an option and there is only one outcome. And while the small agent will never have the financial resources available to the large national agencies, just remember that the magnitude of their compliance concerns is exponentially greater as well. Many have multiple offices in multiple states, and hundreds of employees. Each of those offices and each of those employ-

ees must be trained, certified and comply. Small agency compliance problems are minute from that standpoint. Policy and procedure standardization is far simpler, and much less complex.

There will be additional costs, and for a small agency, it is not unreasonable for those expenses to be in the neighborhood of \$25,000 - \$50,000. If you have a good relationship with your banker, this is the time to request that line of credit to fund the associated costs if financial resources are not immediately available. Many of the actions necessary to achieve compliance are relatively inexpensive and easily implemented. It is all a matter of prioritization, planning, commitment and follow-through. The question that you must ask yourself: "Is my business worth \$50,000.00?" All of the items that are being required quite frankly are things that we should have been doing all along. Your clients should expect that your agency will protect their personal data, closing documents, and disburse their settlement funds securely. Just because your operation is on a smaller scale, does not mean that your clients should not be equally secure when they select your agency for title and settlement services.

There will be a future and it is not all gloom and doom for those that

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are out front in achieving compliance certification. Common thought has been that settlement and escrow agents had until August 2015 to attain compliance certification. This was the date established by the CFPB for RESPA-TILA implementation. That is not necessarily the case. Many lenders are already asking settlement agents to verify compliance. Many agencies have already received letters or email requests to provide compliance documentation. The response time allowed is brief, some only a matter of a few days, and certainly no time is available to start the process/complete the required certification standards. You will need to demonstrate that you have met some of the requirements and that you have a plan in place, and that your agency is on track, and has embraced the transformation. How much is enough is purely speculative. Certainly, the more achieved the better the likelihood of staying in the game! There are many agencies that have already been removed from approved settlement listings because they had done little or nothing. It was previously recommended that you complete the ALTA certification package no later than September 2014. That date has now passed, and there is no question that, if you haven't done so already, you should be initiating

and completing the compliance process as soon as possible.

In March 2014, Wells Fargo, the Nation's largest lender endorsed ALTA's Best Practices in a newsletter to its network settlement agents and affirmed that it values local title and settlement providers that deliver a high level of professionalism, customer service and quality to their customers, and supports consumers' choice for title and settlement services, as long as "that choice is one able to consistently meet all applicable requirements." But that same Wells Fargo newsletter also cautioned settlement service providers that lender oversight is increasing and that they should be in the process of documenting their compliance enhancement efforts and be prepared to demonstrate their "Top Performer" status.

Another cause for optimism is the OCC Semi-Annual Risk Perspective that was released June 25, 2014. In the report one of the key risks facing Large Banks is "Third-party arrangements that introduce concentration risk." This is exactly what the large money bank lenders other than Wells Fargo have done to mitigate their third party risk. Size does not preclude fraud and defalcation; rather, it can magnify the losses exponentially. For example, TitleServ a large national ti-

tle agency doing business in 47 states, was shuttered in 2010 for massive fraud measured in tens of millions of dollars.

STAY THE COURSE AND BECOME "AGENTS OF CHANGE"

Getting Started: ALTA Best Practices Certification Package (www.alta.org/bestpractices/index.cfm)

Simple and easy starting points:

- 1. Secure email.** If you are not already sending prelims to your lenders via secure email, you are openly acknowledging that you do not understand or acknowledge the importance of protecting NPPI. You may have already lost a referral source and simply don't know it yet.
- 2. Document destruction.** Secure shredder boxes for all excess documents.
- 3. Daily three-way reconciliation.** In 2009 the New York BOI recommended to agents: "Get an automated solution to monitor your escrow accounts through three-way and daily reconciliation of escrow accounts". LNTA's reconcile three ways each day, as do virtually all the title and escrow agencies in the West. When I have been out West, as I recently was at the Pacific Northwest Annual Con-

ference, every agent reconciled daily, utilized positive pay, and limited the acceptance of good funds. I jokingly said, “Back East we don’t know Escrow!” No offense intended but those are the simple hard facts.

4. Positive Pay with Payee Match.

At a very minimum you must utilize positive pay. If you currently are not utilizing positive pay contact your banker and get it established before the end of the month.

5. Physical Security.

Clean desks and a written physical security program are easy to implement. Write up a check list of the actions to be taken at the end of each business day, ensure that computer monitors are shielded and not viewable by others and that screen savers automatically activate after a brief period of inactivity. Where are you closed settlement files stored? Hopefully they are all electronically scanned and stored in the “clouds”. If those files are not, you must move them to bonded secure storage. Jack Rabbit Storage units and home attics or garages are not adequate. If settlement files are stored in your office, is the space locked and access limited? Is there controlled entry with a record of who entered and what files were removed and when were they

returned. Do you have an inventory of the files being stored? Are your offices alarmed? Are keys controlled, and not easily duplicated? Are there electronic access controls? Etc....

6. IT Security. This is the toughest requirement. Getting started is relatively simple but requires some rather stringent rules and changes. The below are simplistic and inexpensive:

- *Strong Passwords;*
- *Locking Down Firewalls;*
- *Eliminating Wi-Fi usage in the office;*
- *Removing USB ports and DVD drives;*
- *Establishing a dedicated stand-alone computer for online banking;*
- *Restricting the ability to surf the net;*
- *Keep cell phones and other portable devices off the network; and*
- *Subscribe to Real Estate Data Shield, (my only product plug)*
 - I. *Your employees will receive the required IT security training and training certificate.*
 - II. *IT assessment and validation is offered.*
 - III. *Tailored IT programs are available.*

The above is by no means a complete listing of all that must be done. From a compliance per-

spective, it represents a “reasonable” start. These actions (and the documentation of each such enhancement) outlined above can be accomplished within a matter of a few weeks, and hopefully will demonstrate a “good-faith compliance effort” on your part, that should enable your agency to continue to receive business referrals from your lender and realtor networks as you progress to reach full compliance.

Caveat: *This is a personal opinion/ recommendation based upon having participated in the ALTA Best Practices and Future of the Title Industry panels; Testimony before the National Association of Insurance Commissioners (NAIC) on “Escrow Standards the Imperative for Change”; Input to the NAIC Escrow Whitepaper; and meetings with money bank lenders and the CFPB. These recommendations do not necessarily reflect the opinions and recommendations of ALTA; your title insurance underwriters; or any lender compliance considerations.*