

**AMERICAN  
LAND TITLE  
ASSOCIATION**



**TESTIMONY OF ANNE ANASTASI  
ON BEHALF OF THE  
AMERICAN LAND TITLE ASSOCIATION**

**“Robo-Signing, Chain of Title, Loss Mitigation,  
and Other Issues in Mortgage Servicing.”**

**Thursday, November 18, 2010  
10:00 a.m.**

**HOUSE FINANCIAL SERVICES SUBCOMMITTEE ON  
HOUSING AND COMMUNITY OPPORTUNITY**

My name is Anne Anastasi and I am the President of Genesis Abstract, LLC in Hatboro, Pennsylvania. I have been in the land title insurance industry for 33 years, and I hold Pennsylvania's Certified Land Title Professional designation, which is the highest designation available in the title industry.

I am the current President of the American Land Title Association. ALTA, founded in 1907, is the national trade association and voice of the real estate settlement services, abstract and title insurance industry. ALTA's over 3,800 member companies operate in every county in the country, where we search, review and insure land titles to protect buyers and mortgage lenders who invest in real estate. ALTA members serve as independent, third-party facilitators of real estate transactions. We do not represent the borrower, lender, seller or any other party in a transaction. ALTA members include title insurance companies, title agents, independent abstracters, title searchers and attorneys, ranging from small, one-county operations, to large, national title insurers.

On behalf of ALTA, I appreciate the opportunity to appear before you today and to discuss how improper foreclosure practices by our nation's lenders affect the process of transferring real property in the United States.

### **The United States Real Property Transfer System**

Internationally respected economist Hernando de Soto said, "Westerners take [their land ownership system] so completely for granted that they have lost all awareness of its existence." I agree with Mr. de Soto, and to help change that observation, I am going to discuss our system of land ownership so that we may better understand the effects of foreclosure irregularities and deficient documents on housing markets, mortgage finance and property rights.

Mr. de Soto's research finds that systemic poverty in poor countries results from the absence of a formal property rights structure. De Soto argues that economic success in America relies on a clear system of property rights which was developed to meet land owners' needs over the course of American history. This legal system is the basis for economic activity, entrepreneurship and the creation of wealth and capital. De Soto holds,

You are able to hold, transfer, assess and certify the value of such assets only through documents that have been legally authenticated by a global system of rules, procedures and standards. Ensuring that the relationship between those documents and each of the independent assets they represent is never debased requires a formidable system of legal property

rights. That system produces the trust that allows credit and capital to flow and markets to work<sup>1</sup>.

The United States' property transfer system, governed by local public records, provides our economy with the legal underpinning to make homeownership possible. The land title industry fosters the trust necessary in these records so that equity in real property can be exchanged for mortgage credit. This trust, which is taken for granted in our country, is fundamental to our economy and extraordinary to the rest of the world.

For centuries, this public recording structure has provided transparency, efficiency, and security that is unimaginable in countries where numerous steps and government approval is required before real property can be conveyed from one owner to the next. Our system of land transfer has a relatively short settlement transaction time and provides individuals strong protection of their property rights, saving borrowers and sellers money. It is our system and the confidence that consumers and creditors can have in the work of land title and settlement service professionals, which allows the United States to have the strongest real property transfer system in the world.

## **What is Title?**

The "ownership" of real estate involves the interest in a bundle of rights relating to the use of, and disposition of real property. This concept is called title, and these rights can be transferred individually or together. Prior owners may have created interests in a property or suffered liens against a property that will affect the interests acquired by a new purchaser. Potential buyers need to know which rights have been removed from or added to the bundle as this will affect the use of the land, and as a result, its value.

Some rights can be removed from the title bundle voluntarily. That is, the owner may agree to sell, give away, or otherwise forfeit a right. Rights that can be voluntarily removed from a bundle include:

- 1) Rights to natural resources, such as water or timber on the property;
- 2) Subsurface rights to other natural resources, including mineral and oil rights; and,
- 3) Air rights, such as the right to construct a building above a certain height.

In addition, rights that can be voluntarily granted and added to the bundle include:

- 1) Easements to utility companies;

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<sup>1</sup> De Soto, Hernando. "TOXIC Paper: The Obama administration must tackle a problem that has bedeviled the emerging markets for years." Newsweek Mar 2, 2009.

- 2) Joint use agreements, such as common driveways and party walls;
- 3) Life estates, in which one party other than the owner retains the right to use and occupy a property for the rest of his or her life;
- 4) Reversionary rights, where title passes back to a previous owner if property ceases to be used for purposes other than those for which it was deeded;
- 5) Restrictive covenants, in which private parties agree to limit uses of a property – for instance, property restricted to residential use only; and,
- 6) The rights of consensual lien holders, those who obtain rights through other voluntary agreements, deeds of trust or mortgage for instance.

Other rights may be legally removed regardless of a property owner's wishes as ordered by local, state or the federal governmental authorities and courts. Typical involuntary removal of rights might include:

1. Continued ownership if taxes go unpaid;
2. Bankruptcy court order, forcing the owner to sell land rights to pay off debts;
3. Money judgments, awarded by the courts in civil suits that could result in a foreclosure;
4. Eminent domain, giving the government the right to take land by condemnation for official use or for use by the public;
5. Divorce, allowing courts to divide marital property between the owners or for payment of child support;
6. Mechanics liens, imposed in cases where construction or other types of work have been performed on the property and the contractor hasn't been paid;
7. Zoning laws, imposed by government to prohibit all but a single use of the property;
8. Health and environmental regulations, subdivision, or condominium regulations and flood control requirements may be imposed, forcing the owner to give up certain property rights; and,
9. Improvements from an adjacent property may encroach or intrude on real estate.

In time, a parcel of land may have a number of important rights missing from the bundle which could cause a potential buyer to reconsider the value of the property or their purchase.

## **How Does our System Evidence Which Rights are Included in Title?**

Public records document the history of title and reveal the rights that have been removed or added. In our country, real property is conveyed by a private contract – most commonly called a deed. This document is recorded in the county land records to give notice to the public that the property's ownership rights have been transferred. Generally, under state law, courts will not enforce or protect individuals' property rights unless those rights have been recorded in the land records.

As we hear about document irregularities and question the validity and credibility of foreclosures, it is important to make the distinction that the reported problems are in areas of due process. To appreciate whether errors in foreclosure documentation extend to public records and what can be discovered in the preparation of a title insurance policy, one must understand what documents are included in the public record and what documents are not included in the public record.

When a consumer purchases a home and finances their purchase with a mortgage loan, there are three main documents that are executed to transfer title. The first document is a deed, which conveys ownership from one party to another and is recorded on the public record. The deed is a private contract, separate from the purchase contract, and it must contain certain legally-required provisions including: a legal description of the property, a statement describing the rights being sold, and the purchase price. The deed must be signed by the sellers and acknowledged by a notary public. Public recording of the deed allows consumers to protect their property rights, including the right to possess the property against challenge from a subsequent or prior unrecorded claimant to the property.

The second document is the mortgage, also called a deed of trust, which is also recorded into the public record. A mortgage is a lien on the property that notifies the public that there is a mortgage loan outstanding that gives the lender the right to sell the property in order to satisfy payment of a debt. Liens and lien priority are hallmarks of our property rights system. Lien priority is the legal structure that determines which creditor has the right to be paid in which order if a property must be sold to satisfy payment of a debt. This structure assures creditors of their rights when property is used as collateral for payment of a debt. Creditors lending money to finance the purchase of real property require that they will have the first right (lien priority) to foreclose upon the property in the event of default. To do this, the borrower is required to execute a mortgage (or deed of trust), which grants the creditor the right to foreclose upon and sell the property if the borrower defaults on their mortgage obligation. This mortgage is recorded in order to secure the priority of the lender's lien.

The third document is a promissory note, which identifies the principal, interest rate, repayment schedule and other terms of the loan. The note is not publicly recorded for a number of reasons – most importantly to protect the purchaser’s right to privacy.

### **The Need for Land Title Services**

Before a transaction can be completed, buyers, sellers and mortgage creditors depend on the land title industry to research the public record in order to determine which rights have been removed from the title bundle. In any real estate transaction, the buyer needs to be certain that they will ultimately be acquiring ownership of the property subject only to those liens and encumbrances that they know to exist and are willing to accept.

The seller signs the deed, which will likely contain a general or special warranty deed, in which the seller provides certain warranties of title to the buyer. Thus, the seller is contractually liable to the buyer if those title warranties are not accurate. Therefore, the seller has an interest in ensuring that the title transferred to the buyer will not be subject to any potential claims that could trigger liability under those warranties.

The mortgage lender is willing to provide financing for the transaction on the condition that the buyer, in fact, will own the property and that the mortgage lender will obtain a valid and enforceable first mortgage lien that is not subject to any other lien or claim that could adversely affect that mortgage interest. While various approaches have been used in the history of the United States to provide these assurances, since the late 19<sup>th</sup> century, the gold standard by which buyers, sellers, and lenders obtain these assurances is by purchasing a title insurance policy. To understand the reasons why this has come to be the standard, one must first understand title insurance, its value and how it satisfies important market demands.

The need for land title services has become especially acute as real estate transactions became more complex in the last half of the 20<sup>th</sup> century. In a market where land transfer is so complicated, buyers need to know exactly what interests are included in the bundle of rights that convey with the property.

The process to determine title begins when agents or abstractors search the public records for documents showing who owns the land and which rights have been removed from the bundle. By doing this, agents and abstractors build the chain of title or the specific rights the buyer is or is not receiving with the property according to the public records. The agent or abstractor uses these records to compile a title abstract, which is a condensed version of the records they have searched. The abstract lists the history of title as it appears in the public record, but does not offer an opinion or draw any conclusion as to how the rights, or lack thereof, affect title to the land. This is the

“title search,” and the information collected is “title evidence.” The length of this process can take as little as a few hours to as many as a few weeks, depending upon the complexity of the title, the accessibility of the land records and available technology.

Having collected the title evidence, individuals experienced in real estate law and title insurance principles examine the title evidence to determine whether the seller has, and can convey, his or her title to the buyer. This evidence discloses the liens and other issues that must be resolved or cured, and discloses exceptions that may have to be included in the policy. It is at this “title examination” stage that the title agent performs one of the most valuable services, which is an inherent part of the title insurance underwriting function: curing defects that may exist on the public record.

The accuracy of public records is extraordinarily important for trust to exist. Land title and settlement service professionals maintain accuracy in our public records by curing defects that are found to the benefit of sellers, buyers, lenders and the public. ALTA’s research has found that curing defects in the public record was necessary in over 35% of all transactions. Curative actions include obtaining releases or pay-offs of discovered liens such as mortgage liens, child and spousal support liens, judgment liens, tax liens, homeowner’s association debts, mechanic liens as well as liens from previous owners that remain on the public record. Curative measures may also include correcting typographical recording and indexing errors in the public record, correcting misspelled names or incorrect legal descriptions.

After the thorough search and examination, a commitment to insure is then sent to the prospective policyholder. The commitment sets forth the conditions that must be met in order for a title insurance policy to be issued, such as additional documents that need to be produced. These documents may include a deed or a new mortgage in favor of the buyer’s lender. The commitment reveals the items that need to be resolved before the policy can be issued, and among others, this might include the payoff of mortgages, judgments, liens, federal and local taxes, municipal bills, and child support debts. Also included in the title commitment are the exceptions to the policy coverage that were found during the title search and examination process. These exceptions include rights that the seller cannot convey, such as the right of utility companies to maintain their lines over the land being conveyed.

If an exception poses a problem for the prospective policyholder, an attempt may be taken by the parties, with the assistance of the title agent, to eliminate those exceptions. If an exception cannot be removed, the title underwriter may be willing to insure over it, either because the title underwriter concludes that the risk of loss or financial damage is small, or because an indemnity or warranty can be obtained from the seller. If an exception cannot be removed and the buyer chooses to proceed with

the purchase, the buyer may seek to modify the terms of their purchase contract with the seller or, in an extreme case, decline to proceed with the transaction. Because the title industry has been so effective over time in detecting and clearing titles errors and preserving the integrity of the public records, it is exceedingly rare that a seller's title is so defective as to be uninsurable or unmarketable, and while troubled titles may take a great deal of time and resources to cure, most issues are curable. This track record provides exceptional liquidity to U.S. real estate markets.

The last step in the process involves the closing of the transaction and services conducted after the closing. At the closing or settlement, the relevant deeds, mortgage instruments, and other documents are executed and funds are exchanged through escrow. After the closing, the new deed and mortgage lien are recorded, and then the title insurance policy is issued to the lender and the new owner, if an owner's policy is purchased. Between the time the new deed and mortgage are signed and the time that the new deed and mortgage lien are entered into the index of the public records, a gap may occur. The length of this gap period depends on the efficiency of local jurisdiction's recording office, and if another document is recorded "in the gap," a title agent will simply not have the ability to discover the document. For example, in Fairfax County, Virginia, the gap is almost non-existent. However, at one point in my home state of Pennsylvania, the gap in one locality was over 11 months in length. This is particularly troubling to the title insurance industry because the gap in the time between the closing of the transaction and the recording of documents represents an opportunity for fraudulent activity. The fraud risk arises because a dishonest party could convey the same interest in the property a number of times to different people during this gap period, similar to selling the same widget on eBay to multiple bidders. Title insurance provides coverage against this risk. We protect borrowers, sellers and lenders during this vulnerable period of time in order to ensure that the transaction can go through quickly, safely and efficiently.

An owner's policy insures the purchaser against financial loss or damage that may arise from defects in the title as it is insured, including the assertion of liens and claims against the property that are not otherwise excepted from policy coverage. The policy includes protection against title defects that may be found in public records but were not discovered during the search of those records and against those non-record defects that even the most comprehensive search of the records would not reveal. These risks include, among others:

- fraud or forgery in the execution of documents in the chain of title (in deeds, mortgages, mortgage satisfaction pieces, etc);



- mistakes in interpretation of wills, divorce decrees, bankruptcy court directives and other legal documents;
- the execution of documents by minors or incompetent persons who could not legally convey property interests;
- the existence of undisclosed heirs who did not consent to a prior transfer;
- deeds executed under an expired power of attorney or on behalf of someone who has died; and,
- errors.

The title policy is issued for a one-time fee, paid at the closing, and there are no renewal premiums. The protection of an owner's title insurance policy continues so long as the policyholder or his or her heirs own the insured property, and can protect the policyholder even after they sell the property if the buyer later asserts claims under a warranty deed with regard to matters covered by the policy.

A loan policy insures the lender: 1) that it will have a valid, enforceable lien on the property in accordance with the mortgage interest created by the loan, 2) that the person borrowing the money has title to the property being mortgaged, and 3) that no other claimant, other than those specifically noted in the policy has a prior, superior claim. The policy is in force so long as there is a balance due on the loan and is assignable to a purchaser of the loan in the secondary mortgage market.

Under both policies, the title insurer is obligated to pay for the costs of defending the title as insured against any covered claim. In virtually all areas of the country, if an owner's policy is issued in the transaction, the cost of a loan policy that is "simultaneously issued" with the owner's policy involves a relatively small additional charge to the cost of the owner's policy.

The single most important aspect of the title insurance industry that cannot be overlooked is that we are the independent third party to the transaction whose only interest is to the integrity of the transaction and the protection of our customers. We are the people who handle the funds that come from the borrower and the lender and disburse it to the appropriate parties in the transaction. Our job is to close the transaction equitably, honestly and in accordance with the agreed-upon instructions, and to get the funds into the appropriate hands.

## How a Foreclosure Affects the Title Process

The presence of a foreclosure in the chain of title does not alter the title industry's duty to provide title assurance to parties involved in the transaction. However, the ability of the industry to provide that assurance becomes more challenging when the credibility of the foreclosure process is damaged by process and documentation deficiencies. Allegations of affidavit issues, robo-signing, notary irregularities, or incorrectly endorsed or assigned promissory notes are serious, but stakeholders can work together to resolve any uncertainty and restore credibility to the system equitably. After all, everyone has a stake in the outcome.

Regardless of any deficiency in the foreclosure process, fundamental to our understanding of how foreclosure affects title, we must remember that foreclosure in a judicial foreclosure process results from a court issuing a binding order allowing the foreclosure sale to proceed. A court order by a judge has the force of law. The judgment can only be vacated or corrected if one of the parties to the proceeding makes an appeal or other motion. It is not appropriate for, nor does the land title industry have the power to challenge these judgments or act as a check and balance on the court system.

A foreclosure appears in the title search and evidencing process in three ways. First, when the mortgage creditor institutes a foreclosure suit, they file a *lis pendens* in the public records. This gives the public notice that a foreclosure action is pending against the property. Second, the court docket in the foreclosure action, including the final judgment of foreclosure is available for examination. Third, after the foreclosure sale either the sheriff will issue a sheriff's deed to transfer property to the successful bidder at the foreclosure sale or the court clerk will issue a certificate of title. Whichever form of document the evidence of the foreclosure sale takes, the document is entered into the public record. The three documents discussed above give notice to the world that a foreclosure action was instituted, that a sale was ordered by the court and that the sale occurred. What these documents do not show is any problem with the evidence used to secure that foreclosure order.

As we hear about document irregularities and question the validity and credibility of foreclosures, we need to remember that these are due process issues. They are fundamentally about the fairness of the process, but also its outcome. The question raised by recent media reports is whether the foreclosing party properly evidenced their standing to obtain a foreclosure judgment by a court. Standing is an important due process protection, akin to proving one's identity, as it ensures that the party asking a court to take away another party's legal rights actually has the legal authority to assert a valid claim. Intrinsic problems with the underlying foreclosure documents, whether they are affidavit issues, robo-signing or notary irregularities, are not themselves a title

defect; however when these issues are not identified during court proceedings, they allow the credibility of a court order to be called into question, and by extension, they become a title defect. Because these problems are part of the court process, they are properly the responsibility of the judicial system to resolve.

The title industry has no way to discover foreclosure irregularities that are not included in court proceedings or documented in the public record. As such, unlike the curative work to correct errors in the public record that occurs before a title insurance policy is issued, the title insurer or agent cannot cure foreclosure defects. Unlike property and casualty insurance lines, title insurance protects against risks that exist at the time the policy is issued. The underwriting of title insurance operates almost entirely on the basis of identifying, evaluating, and addressing title problems before a policy is issued. It is theoretically possible, through a thorough search and examination of the title, to identify all the record defects (but, of course, not the off-record defects) that may exist and then to address them and either eliminate them, insure over them, or exclude them from coverage. Defects in the foreclosure process, while underpinning the documents that are on the record, are in fact similar to other off-record title defects in that they cannot be discerned until someone appears before a court and challenges title after the policy is issued. Therefore it is impossible to eliminate the defect. Each title insurer must decide whether to exclude foreclosure problems from coverage or insure over them.

Differing risk tolerances in the industry will determine how each insurer chooses to handle transactions involving foreclosure. ALTA believes that an increased risk of losses for title insurers' due to litigation or other costs is minimal because: 1) servicers are undertaking appropriate remedial work at the direction of federal and state regulators; 2) to our knowledge, no foreclosure irregularities have resulted in a claim under a title policy; and 3) there are legal protections for purchasers of REO properties that which I will discuss in detail. Although it is possible that insurer costs could increase through additional litigation costs associated with defending a homeowner's title under their owner's policy, we believe that title insurers will be able to obtain recourse from parties responsible for any deficiency. For these reasons and the strong reserving policies of our prudential regulators and our members, state insurance departments have not required title insurers to take additional steps, and discussion of additional capital reserving is premature.

### **Legal Protections for Purchasers of REO Properties**

There are three main protections for consumers who purchase a previously foreclosed property, also called a Real Estate-Owned (REO) property: 1) an owner's title insurance policy, 2) bona fide purchaser for value status, and 3) equitable rights

should a court rescind the foreclosure that in all likelihood would result in the homeowner keeping their home and the person who was foreclosed upon being compensated by their lender for their loss.

Under an owner's title insurance policy, a consumer will be protected from challenges against title by a previously foreclosed upon owner of the property. This protection is two-fold. First, the policy covers cost of defense. Thus under the terms of the policy, even if a title challenge is meritless, the title company will step in and assume the cost of litigation, protecting the consumer's right to title until the matter is resolved.

Second, if a title challenge is successful, the policy will cover a claim and make the insured whole up to the insured amount (typically the purchase price). As a note, a consumer can purchase an owner's policy at any time after closing. If a consumer makes substantial improvements to the property which increase its value (as is frequent when a purchasing an REO), they can purchase an updated owner's policy to protect themselves for the new appraised value.

Bona fide purchaser protection, which is codified in state statutes and common law, allows a consumer to take good title despite competing claims if they record their conveyance first and there is no notice of the claims. The triggers for this protection are recordation and notice. Once a consumer purchases the property, their deed is recorded by the settlement agent, meeting the recordation requirement. Under the notice requirement, a consumer must have actual or constructive notice of a specific claim. Actual notice is met when the purchaser knows that the foreclosed upon owner is planning to sue to re-obtain title. Constructive notice is met when notice of a challenge is filed in the public or court records. Media speculation or newspaper articles about a foreclosure deficiency are not sufficient to defeat bona fide purchaser protections.

Should a court decide that the circumstances of a particular case require the foreclosed upon borrower to re-obtain title the property, the traditional court remedy is rescission of the entire foreclosure. When rescinding the foreclosure, the court seeks to place all the affected parties in the same position they were in before the foreclosure occurred. Thus, in theory, the foreclosed upon owner would receive title, the mortgage creditor would have their mortgage reinstated and the innocent consumer who purchased the REO property, would be refunded all the monies that they put into the property. While the innocent homeowner would be harmed by losing title to the property and having to move out of the home, they will not suffer financially, either because the title policy or the court will make them whole. We do not believe that a court would take these steps as it is likely that the previously foreclosed upon borrower, if his or her title is reinstated, will not be able to meet the obligations of the mortgage and would simply face a second foreclosure proceeding shortly thereafter. Rather, the purchaser would

keep their home and the person who was foreclosed upon would be compensated by their lender for their loss.

## **Electronic Recordkeeping**

Title information found in the title search of the public record and subsequent examination is discovered not by simply finding a document, but also through the tedious study and review of the relevant documents. Each of these documents requires close scrutiny by a trained professional. The signatures, notarizations, and legal descriptions must be reviewed. Often, a right included within the bundle of rights discussed above, is buried in the middle of a paragraph in a document.

Technology can help people to retrieve a document more quickly, but trained professionals must still read and examine each document that is retrieved. Even where documents are found electronically, which are available in 406 of the roughly 3,600 local record-keeping jurisdictions in the country, these documents must still be read, word-by-word to understand the rights that they convey and any limits to these rights.

In addition to electronic public records, the Mortgage Electronic Recording System (MERS) is a valuable tool for our system of property rights that brings efficiency and surety to public records. MERS was created in the 1990's as a response to the time and the cost required to record mortgage assignments in local jurisdictions. As I discussed earlier, the gap between when a document is executed and presented for recordation and when it actually appears in the public record, is the time when mortgage fraud occurs, and this increases the costs and risks for all stakeholders. MERS was created to help reduce the burden on the system and bridge the gap by giving stakeholders the surety to know who owns the mortgage lien.

Title professionals interact with MERS in two ways. First, when conducting the settlement, a title agent receives the mortgage from the lender listing MERS as the nominee for the mortgagee. After the closing, the agent records that mortgage into the public record, thus protecting the mortgagee's rights. A mortgage listing MERS as the mortgagee includes the MERS Mortgage Identification Number on the front page giving the public notice that they can conduct further investigation through the MERS system to identify the mortgagee.

Second, the title agent encounters MERS when they conduct a title search for a sale or refinance transaction. When an agent discovers a MERS mortgage in the chain of title, they know that they need to contact MERS, either through the MERS website or through its toll-free phone number. Using the MERS Mortgage Identification Number, the title agent determines the contact information for the servicer, and then can order the payoff information.

Reports suggest that MERS creates a defect in the securitization process. A potential defect in the securitization process does not create a title claim as a lender's policy is effective as of the policy date. It protects the lender's interest against actions that occurred prior to and including the policy date. Any problems with the securitization occur after the policy date and thus are outside the scope of coverage of a lender's policy.

### **ALTA's Response to Recent Controversy**

Soon after initial media reports were published about foreclosure deficiencies, ALTA reached out to industry stakeholders, including Fannie Mae, Freddie Mac and their regulator, the Federal Housing Finance Agency (FHFA) in an effort to restore certainty and confidence in the REO market. On October 1, FHFA announced that Fannie Mae and Freddie Mac were "working with their respective servicers to identify foreclosure process deficiencies and that where deficiencies are identified, would work together with FHFA to develop a consistent approach to address the problems." On that same date, ALTA indicated that it would be "asking lenders to acknowledge that all appropriate procedures have been followed by the lending community before foreclosed properties are resold on the market."

Staff held individual discussions with ALTA members to discuss whether any additional steps should be taken by servicers to ensure that title insurance policies would continue to be issued to buyers of REO properties and their lenders. On October 13, FHFA directed Fannie and Freddie to "implement a four-point policy framework, including guidance for consistent remediation of identified foreclosure process deficiencies. This framework envisions an orderly and expeditious resolution of foreclosure process issues that will provide greater certainty to homeowners, lenders, investors, and communities alike." This direction required servicers to, "take actions as may be required to ensure that title insurance is available to the purchaser for the subject property in light of the facts surrounding the foreclosure actions." On that same date, ALTA indicated that, "Title insurers are looking to lenders to provide appropriate indemnities," and that "we will continue to work with federal and state regulators, Fannie Mae, Freddie Mac and lenders to bring certainty to the marketplace."

ALTA drafted a model indemnity agreement with Fannie and Freddie that acknowledged the insurer's obligation to defend its policyholders in the event of a court challenge to the property's title, and required the servicer to reimburse the title insurer for any costs of defending the title of the purchaser of an REO property. Since that time, because of the remedial work that servicers have undertaken at the direction of federal and state regulators, that to our knowledge no claim under a title policy has yet occurred

due to foreclosure irregularities and the legal protections discussed above, parties on all sides have walked away from the concept of special indemnity agreements.

## **Conclusion**

ALTA appreciates the opportunity to discuss public records, the land title industry and the effect of the foreclosure crisis on real estate transactions. Bringing stability back to the market for REO properties is essential not just for the title and settlement services industry, but for the nation's economy as a whole. Our country will not see strong economic recovery until we also have a robust housing recovery, and delays in selling REO properties will only add to the already fragile housing market.

Actions like the ones taken by FHFA in its October 13 guidance, servicers in reviewing their foreclosure processes and the courts in scrutinizing servicer practices, are essential for bringing stability back to the market. Transparency protects the integrity of real estate transactions. ALTA is eager to serve as a resource to the Subcommittee and other stakeholders, and I am happy to answer any questions. Thank you.