

## **ALTA Federal Conference 2010**

### **By Debbie Scott**

Nick Henderson and I represented NLTA at the ALTA Federal Conference held February 28<sup>th</sup> through March 3<sup>rd</sup>. We were joined by Becky McKittrick of Stewart Title, Kathie Nathan of Dodge County Title and Mardy McCullough of McCullough & Associates and Director of the Abstracters Board of Examiners.

During the meetings we were brought up to speed on the (then) current status of a number of issues. Among the frontrunners taking the spotlight were Consumer Finance Protection (CFPA), Borrowers' Right to Inspect Closing Documents Act, RESPA and National Association of Insurance Commissioners (NAIC) Agent Data Call.

CPFA under H.R.4173 had successfully passed through the House with an exemption for title services and closings. But, the term "settlement services" by virtue of inclusion in the definition of "financial activities" may subject title companies, as settlement service providers, to the regulations intended to regulate bank and non-bank financial institutions. During the briefing for "Capitol Hill Day" we were asked to discuss CFPA with our senators and ask that the senate version of the bill specifically exempt title services and closing services performed by title/settlement agents on the grounds that we are already regulated at the state level by our departments of insurance and at the federal level under RESPA and TILA. We were also asked to visit with our senators about the possibility of them introducing H.R.4229 to the senate.

The Borrowers' Right to Inspect Closing Documents Act is a consumer friendly piece of legislation (also a good public relations move) that ALTA hopes to have enacted at the federal level. Currently making its rounds in the House, H.R.4229 would allow homebuyers three business days to review documents and ask questions prior to finalizing their loans. The bankers have not yet come out in opposition as public denunciation would damage their already fragile public image. Follow the link for a draft of the bill.

[http://www.alta.org/advocacy/docs/09-12-07\\_BRICD\\_Act\\_Final.pdf](http://www.alta.org/advocacy/docs/09-12-07_BRICD_Act_Final.pdf)

As earlier mentioned, it's making its way around the House and we were asked to ask our congressmen co-sponsor the bill.

Anne Anastasi and ALTA's RESPA Implementation Task Force met with key HUD officials on February 18<sup>th</sup> to address many of the rules that, by virtue of differences in interpretation by the lender and settlement agent, are causing problems for our industry. Among them: transfer tax, curing tolerance variances, when the tolerances are applicable and charges attributable to the seller. HUD has committed to revisiting those and other questions. As decisions are made, FAQs will be updated.

Returning to the HUD Panel this year were Ivy Jackson, Director of the Office of RESPA and Interstate Land Sales, Bart Shapiro, Deputy Director of RESPA and Interstate Land Sales and Laura Turner Gipe, Compliance Specialist, all with the Department of Housing and Urban Development. I think by now we've resigned ourselves to the fact that RESPA isn't going away so the tenor of the session was a lot more subdued than last year. In addition to the items addressed by Anne during Monday's Abstracters and Title Insurance Agents Committee meeting, there were questions brought up for which there won't be a change or additional FAQ. We were advised that:

- It doesn't matter who directed the business to you, if your company is on the lender's list of providers, the tolerances apply. The thought behind it being that if you're on the lender's list, they should know your fees. The lenders lists may contain one or more service providers.
- If you break out your closing fees, you must charge either the actual fee for services (i.e. overnight fees, wiring fees, etc.) or use the cost averaging. If you use an all inclusive closing fee encompassing all closing services provided, you don't have to.
- The transfer of liability for tolerance violations is prohibited. Even if the lender's closing instructions contain a condition or provision that the settlement agent will cure (assume payment/liability for) any tolerance violation, it is prohibited under RESPA and should be reported.
- If you are dealing with a difference of opinion in interpreting a particular segment you should:
  - Try to educate and include FAQs to support your position or direct the other party to the section of the rule that deals with the question
  - Document your file by requesting written direction from the lender
  - Go ahead and close. During this period of adjustment, and assuming your position is the correct one, as long as your file is documented you should be fine. Note: although enforcement of the new rule is temporarily suspended, once the kinks are worked out simply documenting your file may not be enough. If you're dealing with a habitual offender of the rule, HUD may look at you as allowing violations.

The NAIC agent data call...

I heard a shift. May be not a shift as much as an expressed approval? Last year I left with the impression that ALTA didn't want a data call. That it would be too burdensome and intrusive. This year it's an opportunity. If done in an appropriate way, it becomes a means to prove our value. I don't know the reasons for the shift in ALTA's stance but I suppose if the data call is on the track to fruition, we might as well make it work for us. As they say, when life gives you lemons...

Participating on the NAIC State Regulators Panel were Joe Bieniek, Senior Regulatory Services Advisor for NAIC, Paula Sisneros, Director of Compliance and Investigations for the Colorado Department of Regulatory Agencies and Dudley Ewen, Chief Market Conduct Examiner for the Maryland Insurance Department. At the outset and interestingly, Joe Bieniek shared with the group that he in fact understood the importance of and the value of title insurance as a consumer. He owned a home and had actually made a claim against his policy.

The group offered their reasons for a data call. Simply, they want to understand how business is conducted at the agent level. The perception among many commissioners is that with such low claim rates, we must be making a lot of money. In an attempt to put things in perspective they want to create a model vehicle for data collection. They do understand that title insurance businesses operate and are regulated differently from state to state. They also understand the importance confidentiality. They hope to gather information regarding:

- Risk avoidance
  - Number of policies issues
  - Number of files canceled

- Number of title searches prepared
- Business Profit
  - Total premiums collected
  - Closing fees collected
  - Agent splits
- Business Expenses
  - Salaries
  - Benefits
  - Rents
  - Other operating expenses
- Business Loses
  - Escrow and title loses paid by agents

The NAIC holds regular public meetings. Interested parties may be added to their distribution list and to the meeting call lists. Who knew?

Our Capitol Hill visits went well. We were fortunate enough to meet with Senator Ben Nelson personally. He's always gracious to take some time to meet with us. He's a friend to our industry. He told us in no uncertain terms that he's 100% in agreement that title and closing services should be exempt from any CFPB regulation. Alyssa Marois, former Director of Government Affairs for ALTA recently joined Senator Nelson's staff and she will see to it!

Senator Johanns was unavoidably detained but left us in the very capable hands of his Chief Counsel and Policy Advisor, Sarah Novascone. Although Sarah wasn't able to make any commitments for Senator Johanns with regard to exclusion from CFPB, being the astute professional, she asked all the right questions including asking us to provide information on the state regulations currently in place. The meeting went well enough that Kurt Pfotenbauer felt comfortable in asking her to relay ALTA's desire to have Senator Johanns carry the Borrowers' Right legislation in to the senate.

Meetings with Eric Hultman, Chief of Staff for Congressman Lee Terry and Josh Jackson, Legislative Assistant for Congressman Adrian Smith also went well.

Long story short, I felt the conference was informative and productive.