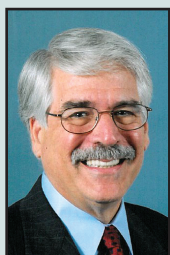


Agent Vetting is Here to Stay



By Stanley Friedlander

There is a noticeable outcry arising in the title industry, about the need for vetting closing professionals. Some of the concerns are real, many are exaggerations fueled by an understandably emotional response to more supervision and management in a highly regulated industry, and a few are downright silly. Nonetheless, it is important to examine all these concerns in light of what is clearly a shift in the industry.

Having been in the title industry for almost 50 years, serving as president of the American Land Title Association (ALTA), among other roles, my initial skepticism turned to support, and I have come to appreciate the importance of independent vetting as a risk management tool for banks, as protection for consumers, and as a method to elevate the title and escrow community. Quite frankly, I believe that independent vetting is important, is necessary, is beneficial, and in the long run is inevitable.

Fraud in the title and escrow community is rising

The facts don't lie, and recent studies by law enforcement agencies clearly reflect that there is a problem in managing risk

of loss associated with closings. Between 2011 and 2012, the FBI estimates that losses from mortgage fraud will grow from \$11 billion to \$13 billion. What is new about these reports, is that historically the fraud numbers were never broken out for losses attributed to the title and escrow community, they were simply hidden among the overall figures. One need only take a look at errors and omission insurance premiums, which have skyrocketed in the past four years to realize that a part of that fraud may well be attributed to the title and escrow community. Of course the numbers only paint part of the picture. Clearly, the vast majority of closing professionals are just that—professionals. However, a small minority of bad actors cause the majority of fraud. They operate in an environment that is not designed to deter or detect fraud.

As much as the title and escrow community may want to point fingers at mortgage banks and brokers as the culprits for the financial industry meltdown and the resulting surge in regulations, we now know that not all fraud losses were due to loan originators. There is evidence



of fraud losses attributable to escrows and closings as well. We can understand that banks are under pressure, from regulators, shareholders, investors, consumers, and rating agencies to address losses. It is this environment that has created the call for third party risk management of all service providers, including closing professionals. This need has existed well before April 2012, as stated by the Consumer Financial Protection Bureau (CFPB) Bulletin, and will not go away through efforts to limit the Bulletin's reach.



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Licensing, insurance and association membership are important ... but they are not risk management

Licensing is not vetting. Licensing bodies, even those with stringent education and insurance requirements, do not and cannot actively monitor a licensee's activity. Licensing bodies may, if notified and if enough evidence is presented, take disciplinary action against bad actors after they fail to meet licensing rules or engage in fraud. When a misuse of trust funds is reported, by then it is too late. Licensing is critical to establish minimum standards for entry to a profession, but it is not designed to be a risk management tool.

The insured closing letters, where available, cover theft of funds after the fact. They are not preventative but reactive. They are also not insurance, and are not a guarantee that banks and consumers will be made whole. E&O insurance is also reactive, it is not risk management, and comes into play after an event. No lender monitors E&O policies today, which means that if an agent fails to pay a premium or cancels the policy, there is no coverage. In addition E&O insurance does not cover intentional acts.

I am a strong advocate for association membership. Associations are critical for advocacy and lobbying efforts to advance common goals of association members. They also provide access to resources, such as educational programs, that can assist in advancing the skills of those members who choose to use the resources. Associations cannot and do not monitor an entity and individual risk; they do not share data regarding members to non-members, nor do they have the power or authority to stop fraud or discipline bad actors. When I was president of ALTA, I was well aware that we

could educate, but we could not supervise and rate our members for risk. There were several efforts made during my tenure at ALTA to create a watch list or exclusionary list compiled with data shared among ALTA members, but even that rather limited approach to addressing risk management failed because members were reluctant to share the information, possibly for fear of lawsuits. Finally, association membership encompasses only a small portion of the entire closing community, and resources are limited; therefore, the ability of any one association to effectively manage the day to day activities of the wide spectrum of individuals who conduct closings is just not possible.

What's in it for agents?

Well, you might ask, if vetting is here to stay, what is in it for me? The answer is simple: Better risk management weeds out the bad actors, the small percentage of whom cause the majority of claims. By doing so, the closing profession is elevated, business opportunity grows for the agents who remain, insurance premiums eventually are reduced and level off, and trust among banks and consumers rise so that the industry benefits as a whole.

Don't get me wrong, there are issues that remain unanswered. How many vetting companies will emerge? Will there be a uniform and standard approach to vetting? Will banks recognize all the vetting companies or will we have to be vetted more than once? These legitimate questions, as well as others that may arise, are not unusual when an industry change is taking place. There is a normal amount of uncertainty as the new processes, players and rules are settled into place. However one thing is certain in my mind, there will be no turning back. The closing profes-

sional risk management model is here and we all need to work collaboratively to iron out the issues and have a say in the end result. Ultimately, I am sure that none of my colleagues want a risk management process imposed upon us from Washington, but would rather embrace one that emerges from within the industry and work it to meet everyone's needs.

In conclusion, contrary to some articles I have read, agent vetting is not a "game," but rather, a necessary risk management process needed in our industry. As the title and escrow community, we need to stop to worrying about risk management and see this movement as an opportunity to prove our professionalism and justify confidence in our services to banks and consumers.

Stanley Friedlander is past president of ALTA, the American Land Title Association, where he was chair of the Education Committee and the Agents Section. Friedlander has also served as president of the Ohio Land Title Association. He now serves as a non-paid industry expert on the Board of Advisors of Secure Settlements Inc.



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