



THE TITLE EXAMINER

A PUBLICATION OF THE MICHIGAN LAND TITLE ASSOCIATION

FALL 2008

SAVE THE DATE!

October 15, 2008

**A Special Presentation
2008 MLTA Education
Seminar, Soaring Eagle
Inn, Mt. Pleasant, MI
with Featured Speaker:**

Ed Rybczynski

(see articles
on pages 15 & 16)

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An Interview with Our New 2008/2009 MLTA Board President - Anthony J. Viviani

by Sarah Maddox Sutton, State Agency Manager, Fidelity National Title Insurance Company

Anthony J. Viviani was sworn in as the new president of the Michigan Land Title Association during the July 2008 Summer Convention. It was my privilege to interview our new leader on his thoughts and ideas for the coming year as he presides over our association.

Mr. Viviani is Senior Vice President and General Counsel for the Philip F. Greco Title Company. Tony entered the title industry right out of law school. He had taken many real estate law classes and had been struck with the idea of how important the title aspect was in real estate transactions. After earning his B.A., Tony worked in the family business for several years before making the decision to attend law school. When he finished, law degree in hand, he started working for a title agency in 1992. Over the past 16 years, Tony has had the opportunity to use his knowledge in many title roles such as agency counsel, State Agency Manager/Underwriter side, State Counsel/Underwriting side, and is now back working on the "agency side" as counsel for Greco Title. It was obvious how much Tony Viviani meant to the Greco family, as there were several of them attending, along with his own family, the MLTA Summer Convention to support Tony as he was sworn in as our new president!

Q: Tell me what your favorite roles have been in the title business?

A: Actually, I've enjoyed it all. I like being "an agent" and I enjoyed "working with agents" when on the underwriting side of the business. Having the background of working in my family business, I like the challenges of the small business owner. I think I've been really lucky to have worked on both the agency side and the underwriting side of the industry, because it gives me a good perspective on the important issues that both sides have to deal with. You know, the people as a whole in the title industry are just a great group of people to work with. They are caring, close, friendly and competitive, but, when it really counts, they will go to bat for you. I've enjoyed working in title since my very first job in the business.

Q: Tony, can you tell me about your "action list" – your goals and objectives that you feel are primary for you in your presidency for the MLTA this next year?

A: I want to take a really aggressive approach to several issues. I have already discussed these goals and issues with **Doug McFarlane** and **Timothy McDonnell** (upcoming MLTA presidents), because projects are not always completed in the same year one serves as president and I think it is important to be sure that those who will become president of our association in the future



are on board with the new programs and problems and continue to follow through after my term of service is over. I know you heard my speech at the summer conference, but let me highlight the important projects and issues that I feel strongly about for our association.

First, we want to develop liaisons from within our board to reach out to other groups and organizations to keep dialog open on issues that affect both the MLTA and other affiliated business groups. That would include communications with the state offices. The real estate industry as a whole is such a driving force related to our state economy.

Second, **George Amar** has been working hard to develop ALTA Chapters for our Michigan title industry. These will be established geographically throughout the state to create greater dialog and communications between agents and the MLTA Board. Our goal is to have more Board input at a local level and more local level agent input back to the board so we are truly communicating with our membership and making sure we are addressing the needs of the agents in Michigan.

Third, our biggest, and I feel our most important goal this year is to get more agents involved in the Michigan Land Title Association! I feel so strongly about this. We need to set up agent leadership teams and expand agent input. I'd like to organize an Agent/Underwriter Summit, which would involve asking questions of each group – interviewing them to find out what is important to everyone and then to get FOCUSED on where they think we should be going. We really need to pick their brains to get this information to be sure that the association is headed in the right direction – the direction the membership wants us to be going.

(Continued on page 2)

MLTA

Michigan Land Title Association
Board of Directors 2008-2009

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(Our New MLTA President - Continue from front page)

I want to mention that **Gregg Nathanson** and his Membership Committee are running a grass roots effort to take the association out to the agents and provide an understanding of the *value* that the MLTA can bring to agents. The underwriters should be helping with this effort as well.

Fourth, we want to move forward on the effort that you and **Cathy LaMont** have been working on for such a long time – the Professional Designation Program. That program will be such a *value* to our members and a recognition of professional accomplishments. If we had all the agents in the State of Michigan as members of our association, that would create more political clout for our industry. There's strength in numbers so to speak.

Fifth, our Public Service Committee believes in ProBono work. Our Association needs to do more public service work. I know that as individuals we all do many things in our local communities, but we need to show the State of Michigan and Michigan consumers that we "give back" as a group.

Sixth, I would really like to push for (and have wanted to for such a long time) the MLTA to host a data base, similar to one hosted by the Illinois Board, that houses a Fraud Data Base for our industry. This could be such a valuable tool for agents and underwriters to fight fraud if we could centralize the information.

And last, but certainly not least, we must continue to increase our membership – to bring true value and provide tools to our members to help them run their businesses as an association.

Those are the main areas I want to focus on, but, there are lots of other things and I will be discussing all these goals and objectives with the Board of Directors at our next meeting. We need to consider having "outsiders" give us a new perspective from other affiliated businesses and the value they can bring because we sometimes can't see how things might look from a business that might be "connected" with ours, but not directly involved in day to day title.

Q: Well Tony, it sounds like you have quite an aggressive agenda to keep you busy over the next year. Your enthusiasm is evident – any last thoughts you'd like to share with the members of the Michigan Land Title Association?

A: I like to have people challenge my ideas and offer different ways of doing things, and all ideas are welcome in helping us find ways that the association can improve in serving its members and increase the membership of our group.

We have a great team of people serving on the Board this year and some wonderful leaders for the future. I'm excited about the coming year – we have so much to accomplish and I have so many people willing to help. If there's anyone out there that is not currently involved in some way, we welcome them and would love to have them help!

Q: How about telling us what's important in your personal life – a peek at the fun side of Tony Viviani?

A: I would also add that my life's devotion is my wife Karleen and 4 children. I also love to golf and arrange and compose music in my home studio.

(Author's Note: I don't know about the rest of the readers out there, but I for one am pleased and proud to have someone like Anthony J. Viviani leading our Michigan title industry and fighting to help us all pull together to make the title business stronger and more professional in our state. On a side note, Tony is really a nice and helpful person to work with and has a name – "Tony Viviani" that is just plain fun to say). 🎧

THE TITLE EXAMINER STAFF

Editor & Board Representative: Bob Wuerfel - Lighthouse Title Group
Publisher & Photographer: Laura Veldhof - Lighthouse Creative Services Marketing
Communications: Darlene Wilsey - LandAmerica
Public Relations: Marcy Welburn - Commonwealth/LandAmerica

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or MLTA 517-374-2728
with any questions, comments, or if you would like to contribute.



Allan Dick

Chief Operating Officer

Best Homes Title Agency, LLC
Southfield



MLTA Involvement: Current Member – Board of Directors; Convention Committee; PAC Committee; Communications Committee (contributing writer and former Committee Chair); Education Committee (current Committee Chair). I also enjoy contributing regularly to the MLTA Educational Seminars and assisting with PAC fund-raisers.

Personal Interests: Proud father of two teenage boys and husband to wife Anne McGraw Dick. Avid sports enthusiast (not to be confused with athletic supporter) transitioning from basketball and softball to less vigorous sports like bocce ball, disc golf and fantasy football. Local school football public address announcer. Also another U of M fan.

Something About You: As revealed by Bill Robinson in his earlier “spotlight”, I too am a closet thespian, and a past president of The Players, a historic, amateur theatrical club in Detroit. Bill and I have written, produced and participated in a number of plays and skits over the years, as well as PAC fund-raisers.

Rob Wineman

Great Lakes Area Manager (MI, IN, OH & KY)
Fidelity National Title Group (Chicago Title, Fidelity National Title, TICOR Title & Security Union Title)
Bloomfield Hills



MLTA Involvement: Board of Directors, Legislative Committee and Public Relations Committee member.

Personal Interests: Triathlons, running, all sports and reading.

Something About You: I started out in the business as a commercial title examiner for Chicago Title in Chicago, IL.

Marcy A. Welburn

SVP - Residential Strategic Initiatives Manager
LandAmerica Financial Group
East Lansing



MLTA Involvement: I am on the Board of Directors for the MLTA. I also serve as the Public Relations committee chair along with the help of Rob Wineman.

Personal Interests: I most enjoy spending time with my family at our cottage up in Traverse City: boating, relaxing on the beach with a good book and shopping at the local stores. In addition I enjoy watching my children’s sporting events and of course as a MSU alum, I am an avid Spartan fan.

Something About You: During the current difficult real estate market, I am very appreciative of the dedicated our members continue to show by contributing their time to support our industry. I have been in the Real Estate industry for over 25 years and continue to be impressed with the great people who choose to work in the Title Insurance arena. I am proud to be a part of this fine group. We should continue to display a high level of integrity as we keep our focus on supporting the American Dream of Home Ownership.

ON THE MOVE...

Michigan Company wins prestigious National Award at the 2008 National Summit Conference.

Judy Sasfy of TITAN won the Sales and Marketing Award and participated in a Question and Answer session with some of the other winners including Mike Pryor, President Elect of ALTA.

Congratulations to Dan Grimshaw

Owner of Mid State Title Services Inc. of Vassar who won the August primary county election for Tuscola County Register of Deeds.

If your firm would like to share information in this section email jsmallldon@lighthousegroup.net.

Welcome New Members

C.E.M. Title Agency, Inc. (Royal Oak) Tim McCarthy

Michigan Express Recording, LLC (Sterling Heights) Gary Beaver

Fleis & Vanderbrink (Grand Rapids) Larry Fleis

Trott & Trott (Farmington Hills) Jeanne Kivi

U.S. Guaranty Title Agency, LLC (Allenton) Michael Alberty

Varnum, Riddering, Schmidt & Howlett, LLP (Grand Rapids)
G. Mark McAleenan, Jr.

Big Gain in Pending Home Sales Index

Courtesy of the official website of the National Association of Realtors® - Realtor.org

Some improvement is projected for existing-home sales in the months ahead, with broader gains seen by the fourth quarter as buyers take advantage of new provisions provided through the recently passed housing stimulus bill, according to the latest forecast by the NATIONAL ASSOCIATION OF REALTORS®.

The Pending Home Sales Index, a forward-looking indicator based on contracts signed in June, rose 5.3% to 89.0% from a downwardly revised reading of 84.5% in May, but remains 12.3% below June 2007 when it stood at 101.4%.

Lawrence Yun, NAR chief economist, says sales have been in a pattern of rising and falling within a fairly narrow range.

"The vacillation of data from one month to the next indicates a housing market in transition," he says. "The rise in pending home sales was broad-based with all four regions showing gains. This is welcome news because a rise in contract activity is necessary for an overall housing recovery. With a tax credit now available to first-time home buyers, increases in home sales could be sustained with the momentum carrying into 2009."

Across the Region

Here's a deeper look at the index throughout the country:

- South: jumped 9.3% to 92.4% in June but is 16.6% below June 2007.
- West: rose 4.6% to 101.0% in June but remains 1.7% below a year ago.
- Northeast: increased 3.4% to 79.6% but is 15.4 % below June 2007.
- Midwest: rose 1.3% in June to 79.6% but is 13.3% below a year ago.




Sales gains have been consistently strong in recent months in Sacramento, CA, Las Vegas, and Ft. Myers, FL, where affordability conditions have greatly improved.

The pickup in contract signings appears to be broadening with many affordable markets in mid-America now showing year-over-year gains, including Columbus, OH, Charleston, WV, Oklahoma City, and Colorado Springs, CO. Pending sales have fallen significantly in Texas markets and in the Pacific Northwest - two regions with very strong local economies.

More Market Forecasts

Yun says home prices did not fall as much as anticipated in the second quarter. Home prices are projected to increase 3 to 6 percent in 2009, Yun adds. Other NAR predictions influencing the market:

Mortgage rates. The 30-year fixed-rate mortgage, which also has been vacillating, is likely to trend up to 6.5 percent by the end of 2008, and then hold at that level for most of next year. NAR's housing affordability index is forecast to remain favorable this year, averaging 13 percentage points higher than in 2007. 

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Views from the Top

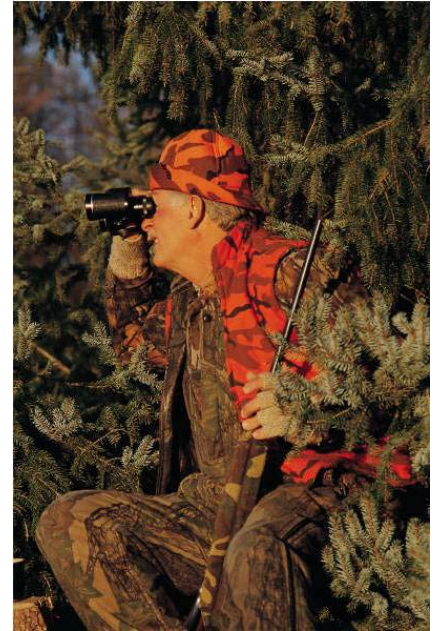
by Lester Sam Hill

Greetings from the North.

First, I am sure sorry that I missed a few issues. Me and my partner Gordie Gillespie have sorta been caught up in the politics of the day. I know you city folk might have a hard time understanding this, but one of the biggest elected jobs out here in the hinterland is the County Drain Commissioner (next to the ROD of course). Our huntin' buddy Darin Dornpopper is runnin' as an independent write in candidate so me a Gordie been given him a hand with his campaign. His competitor, Ron Ropenspear had to go and sure enough we got on the ballot against him (write ins up here mean you forgot to get the paper work in on time but still got it in before it went to the printer) and are all pumped up about November. Our political idol Ronnie Reagan had a funny quote about his view on government that we have slapped on ole Ropenspear in all our negative ads and it goes like this: "Government's view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it". Ole Ropenspear is madder than a choken' pigmy at us but I think we got em' licked. Course me and Gordie don't think much about "paybacks" or pork barrels but I am pretty sure that Darry (that's what we call Darin at hunt camp) will help us with our permit to drain the swamp on the northwest 40 of our hunting camp. It is a perfect place for a county drain and everyone knows it. Don't go makin' any wrong conclusions about how things work up here. Heaven knows you city slickers can't be pointin' any fingers with all that stuff goin' on down there with that big city mayor and all his dallying around.

If the ole abstract business doesn't pick up soon, me and Gordie are gonna start a bee farm to get us through the fall, and maple syrup draining and production to get us through the spring.

Winter looks like we are gonna hang our hats on the foreclosure business from The County State Bank. Me and Gordie's law practice has been okay and we finally hooked up with a down state law firm so that we can do the work here and use their name on all the legal mumbo jumbo so that no one here knows we making a little money on their misery. Our new secretary Mildred's husband is on the bank board (okay, his family started the bank in 1903 so I guess he is sorta the owner) and he is okay with this. I told Gordie that hiring a 67 year woman who can't tell a computer from dishwasher and was looking to get back into work to keep busy could payoff. Right again, eh?



I will be talking to you again soon, and this is the view from the North so you can see from the country what it looks like from here to there from time to time.

The opinions expressed herein are those of the author and not necessarily those of the Michigan Land Title Association or those of its' members.



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AUDIT COMMITTEE.....

The Michigan Land Title Association Audit Committee conducted a review of the Association's balance sheet and related statements of revenue and expense for the calendar year ending December 31, 2007. The committee was comprised of the Association's Treasurer, [Douglas McFarlane](#), it's President, [Mary Lou Hartwell](#), it's President-elect, [Anthony Viviani](#) and Director, [Timothy McDonnell](#). The committee was also aided by its Deputy Executive Director, [Derek Dalling](#).

Our review included examining on a test basis, evidence further supporting the amounts and disclosures on the financial statements. We further examined the method by which entries were categorized to assure that the financial statements were free of material misstatement.

Based upon this review, it is the opinion of the Audit Committee that the attached Statement of Assets, Liabilities and Fund Balances accurately reflects the financial position of the Association as of December 31, 2007.

Michigan Land Title Association Statement of Assets, Liabilities and Fund Balances As of December 31, 2007.

Assets:


Checking - Capitol Nation Bank (\$753.22)
Investment Account - Capitol Nation Bank \$94,091.08
Prepaid Insurance \$1,039.69
Undeposited Funds \$15,764.32
TOTAL ASSETS \$110,141.87

Liabilities:

Prior Year Fund Balance \$85,721.85
Current Year Net Income \$24,420.02
TOTAL EQUITY \$110,141.87

Reviewed by the MLTA Audit Committee 

EDUCATION COMMITTEE.....

The MLTA Education Committee is pleased to announce that Fidelity National Title Group is graciously sponsoring a popular, national speaker for this fall's Seminar, making it a unique one time EVENT! [Ed Rybczynski](#) was once the owner of a successful title company and a respected member of Baltimore's business community. In 2000, Mr. Rybczynski's unwitting involvement in a flipping and mortgage fraud scheme led him to become inmate number 34661-037 at the Lewisburg Federal Penitentiary! His presentation illustrates the consequences suffered by a busy professional who was victimized by a manipulative and cunning fraudster, and the lessons to be learned. Audiences, coast to coast, laugh and cry as Ed brings the reality of a federal conviction to life, particularly the human aspect of life altering consequences. In addition to Mr. Rybczynski's two hour presentation, questions and answers, the MLTA Education Committee has assembled a stellar line up of speakers to round out the seminar, including [Doug Smith](#) on "Short Sales", [David Lerner](#) on "Bankruptcy Basics", [Tim Ward](#) with his "Lansing Report" and [Gregg Nathanson](#) and [Allan Dick](#) teaming up to cover Trusts, Certificates of Trust Existence and Authority, Land Trusts and IRA Custodial Accounts. It should be a most informative seminar. Join us! 

LEGISLATIVE COMMITTEE.....

Summary of the Primary Election: All 110 seats in this year's primary election for the Michigan House of Representatives were up for grabs. Sixty-five Representatives face re-election this term, 18 of which had a contested primary early August. Ted Hammon, the only Representative to lose his seat in the primary election, was replaced on the Democratic ticket by candidate Jim Slezak.

There are 45 open seats this election, 2 of which were effectively determined in this month's primary. These two candidates will not face a challenger in the general election and are waiting to join the House; they are: Fred Durhal Jr. (D-6), and Jimmy Womack (D-7). Seven other incumbents, all Democrats, secured victories in their primaries, ensuring them another two-year term.

For the General Election this November, there are a remaining fifty-eight incumbents facing a challenger on the ballot. These, coupled with the forty-three remaining open seats, will determine which party will command the majority in the upcoming term.

A Look Ahead to the General Election: Though there are many close races coming up in the November general election, here are a few of the most competitive races to watch:


101st District: Dan Scripps (D-Leland), a graduate of Alma College and University of Michigan Law School, was the only Democrat to run for the 101st District. Scripps ran previously for the 2006 seat, narrowly losing to current State Representative David Palsrok by 3% of the vote. This term, Scripps is up against Ray Franz (R-Onekama), a grocer and former Onekama Village President, who beat out Michael McManus, father of State Senator Michelle McManus, by 79 votes. The Republican leaning district could be up for grabs this November, as the two face off for one of the most closely contested districts in the state.

51st District: Paul Scott, (R- Grand Blanc), a graduate from both Harvard and Michigan University College of Law, most recently served as Deputy Director of the Gallup Organization's World Poll Division. Scott, a Grand Blanc native beat out businessman Vince Lorraine and pilot James Swenor with 41% of the vote. His opponent, Michael Thorp (D- Goodrich), former journalist and current Goodrich School Board member, won the Democratic nomination with more than 69% of the vote against former GM worker Thomas McGee and substitute teacher Harold West.

39th District: Amy Peterman (R- West Bloomfield), Walled Lake School Board President and family law attorney, is a graduate from University of Michigan and Wayne State College of Law. Peterman, a former legal counsel of the Senate Majority Policy Office, is running against Lisa Brown (D- West Bloomfield), a Realtor for Max Brook Realtors in Bloomfield Hills. Brown is a lifelong resident of Oakland County and belongs to the Michigan Association of Realtors, is a member of the State Bar, and Michigan Consolidated Association of Realtors. Both candidates have a tough race ahead of them as both parties try to win the 50/50 39th House District.

And here is the background information on Fred Durhal Jr. and Jimmy Womack, who do not face a general election opponent:

Fred Durhal, Jr. (D-Detroit) District 6: Former Representative, Durhal won 28 percent of the vote, beating out former NAACP policy director Brian White by 628 votes. Durhal served in the House for four months and has 30 years of experience in all levels of government making him plenty qualified for this seat. His experience includes being the first black political director for the state Democratic Party.

Jimmy Womack (D- Detroit) District 7: With over 17 Democratic candidates, Detroit Public Schools Board member Jimmy Womack netted 24 percent of the vote, beating Al Williams by 323 votes. Womack is an ordained minister in the United Church of Christ, a retired anesthesiologist and is a past president of the city school board he still sits on. 

ABSTRACTIONS

by Allan Dick, COO, Best Homes Title

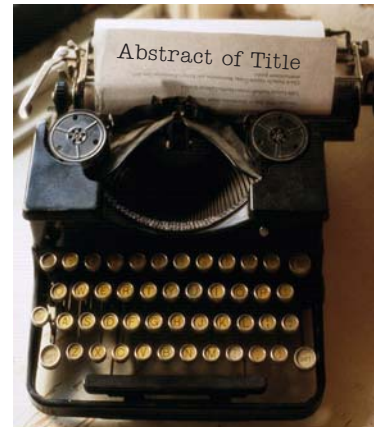
Well, another successful Summer Convention with an uneventful, but most enjoyable “room crawl” capping off the final evening. Congratulations to all involved! While not the exotic location (at least to some people) that the more northern ski/golf resorts are often considered, Frankenmuth offered us a good time and good value. Congratulations, too, to the new directors and officers and award winners.

Hey, how about that [Dan Grimshaw](#) (owner of Midstate Title Services in Vassar), winning the Tuscola County Register of Deeds primary over the incumbent. Looks like he is in the driver’s seat to win the November election. Sure hope he remembers his roots!

Back to the Summer Convention, the PAC Bowling for Dollars fundraiser was a huge success, not only for raising funds, but for its entertainment value. Congratulations to [Tony Viviani](#) (for the idea) and [Tim McDonnell](#) (for the implementation). Also, thanks to [Michael Donovan](#) for disclosing his secret for being part of the winning adult team - in true sports superstition style - not changing his underwear (well, that’s what he said...). The play-by-play announcer has a field day with that. Thanks, Mike for being a good sport!

You’ve heard about the proposed RESPA Rule changes, right? Speaker Howard Lax gave us an earful on that at the Convention. Well, there was a vigorous letter writing campaign to persuade HUD to reconsider, or at least reconfigure the proposed changes. But, it doesn’t look like the campaign succeeded. While the rule changes may be modified, as a result of those letters, the changes apparently will still be instituted this fall – yikes!

If you recall, in my last Abstractions, we were trying to locate [Lester Sam Hill](#), who has penned the “Views from the Top” column for some of our prior editions. Seems that our call out to locate him was a success as Lester contacted me via telegraph and it said as follows: Dear Allan [STOP] Please post my latest “Views from the Top” in your next newsletter [STOP] Am hearing that you were looking for my column and will do my best to get back to you on a more regular basis [STOP] Don’t know what regular basis means but assume that ball players can run over these much the same as the not so regular bases [STOP] – Okay, I am no Lester Sam Hill. So, I will stop.



Finally, please look for the article in this issue of the *Title Examiner* by [Ed Rybczynski](#), who will be the featured speaker at the MLTA Fall Education Seminar in Mt. Pleasant on October 15, 2008. Mr. Rybczynski has some extraordinary credentials and comes with a unique perspective on real estate and mortgage fraud to share with us all. This seminar will be presented ONLY in Mt. Pleasant this fall, due to the limited availability of this guest speaker. That seminar lineup will also include sections on Short Sales, Bankruptcy, Trusts and Closing Protection Letters. Registration forms will be mailed out in the next several days. You won’t want to miss this one! 📧



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AFFINITY RELATIONSHIPS UNDER RESPA: MAKING MONEY THE “OLD FASHIONED WAY”

by Howard Lax, Attorney/Partner in firm of Lipson, Neilson, Cole, Seltzer & Garin, P.C.

An Introduction

Affinity relationships are a wonderful means of developing a supplemental income stream. Unfortunately, many affinity relationships are implemented outside of the framework of Section 8 of RESPA. Many times, this is the result of misunderstanding what RESPA requires, and what it does not. This is evident from the settlements entered into by real estate brokers, mortgage brokers, and title companies who were found by HUD to have violated Section 8 of RESPA. Section 8 of RESPA prohibits certain “kickbacks,” but that does not explain when a “kickback” is illegal and when it is not.

Consumers understand “kickbacks” as rebates. You buy a product from a retailer, and the manufacturer gives you some of your money back. Businesses understand kickbacks as “referral fees.” You work as my employee to find a customer for my goods and services, and you earn a commission. Both of these examples are “kickbacks,” but neither example is prohibited by RESPA. Therein lays the confusion. A reasonable person does not understand why “scratching someone’s back” can be an illegal kickback if it benefits both parties, and what “magic bullet” makes it a legitimate relationship.

Section 8(a) of RESPA prohibits paying or receiving any fee or other thing of value (even a referral) in return for the referral of “settlement services” in a “federally related transaction.” Section 8(b) of RESPA states that a person cannot accept a settlement service fee, or a split of a settlement service fee, in a “federally related transaction” without providing “settlement services.” Just as the commandment, “Thou shall not kill” does not elucidate the exceptions for self defense, military action, and police action, the above prohibitions do not describe the exceptions to the rule.

Most real estate professionals and home builders are looking for supplemental sources of income. Section 8(c) of RESPA gives us a number of exceptions to the prohibition against kickbacks. The most useful exception in Section 8(c) of RESPA is the “goods and services” exception. A settlement service provider may pay for substantive goods and services, even when the payee refers consumers to the provider for settlement services. The payment must be earned for goods and services, not for the referral of mortgage loan customers, and not for services that duplicate services already provided as part of the loan origination process. Just as lenders “bundle” settlement services, real estate agents, builders, and other referral sources may “bundle” their services to benefit mortgage brokers and lenders, and receive fair compensation for these services. Mortgage brokers and

lenders, to a lesser extent, may bundle services and sell these to title agencies. There are a number of ways for mortgage brokers and mortgage lenders to interact with real estate professionals, title agencies, residential builders, and others, to earn additional income by utilizing this exception. The keys to developing these affinity relationships are (a) to find a “bundle of services” that benefits both parties, and (b) to identify the market rate payable for these services. The parties must then identify the goods and services provided in a written agreement, and to pay no more than market rates for the goods and services. Any amount in excess of market rates will be inferred to be a kickback for the referral of business.

Adding services to a transaction, or providing cash rebates to the borrower as part of the “bundle,” gives the borrower an incentive to choose to receive mortgage origination services or title and escrow services through the affinity relationship. This drives additional compensation to the affinity partners. The result is a win-win arrangement for the mortgage professional, the affinity partner and the consumer.

This column is the first in a series of sixteen segments. In the coming weeks, we will discuss the limitations of RESPA, the exceptions to the rule, and various frameworks for establishing affinity relationships that avoid violations of federal law. In addition, we will discuss various exceptions to Michigan licensing requirements that permit real estate agents to act as affinity partners with mortgage lenders. The sixteen segments will be organized into two broad sections. First, we will discuss the definition of a kickback, and its exceptions in an academic exercise. You must understand what is prohibited to understand what is allowed. Second, we will discuss various methods of establishing affinity relationships that do not violate RESPA.

Does RESPA Apply?


The first question a law professor would ask is whether the transaction is subject to RESPA. RESPA only applies to “federally related transactions.” Any person or entity originating one million dollars or more of residential mortgage loans in a calendar year that is also subject to disclosure requirements of the Truth in Lending Act (TILA) generates “federally related transactions.” Any transaction that is assisted with money from the federal government, or is insured or guaranteed by the federal government, or is sold to FNMA or FHLMC, is a “federally related transaction.” Hence, we perceive all mortgage transactions as subject to RESPA, but that is not the case.

The following are exempt from RESPA:

- Typical one-time seller financing that is not valued at over one million dollars, or the seller does not engage in a sufficient number of transactions to be subject to TILA.
- Business purpose credit transactions that are exempt from TILA. For example, a mortgage loan to an investor to acquire residential rental property is a business purpose loan that is not subject to TILA or RESPA.
- Cash transactions are not subject to RESPA. HUD also carved out other loans from RESPA by rule:
- Loans secured by 25 contiguous acres are not subject to RESPA.
- Loans secured by multi-family housing (5 or more units).
- Loans secured solely by land that will not be developed for at least two years.

In contrast, some transactions that we might assume are exempt from RESPA are still subject to the anti-kickback rule:

- Construction loans if the lender makes the end loan, or the borrower buys the lot with the first draw.
- Home equity lines of credit even though certain disclosures are excused.
- Loan modifications if the note is replaced or the mortgage is amended.
- Mortgage assumptions if the lender must approve the assumption.

Discussion of these exceptions is largely an academic exercise. RESPA applies to the majority of residential mortgage transactions, including those involving our readers. For the remaining segments of this column, we will ignore transactions that fall outside of the scope of RESPA, and concentrate on core businesses dependent upon residential mortgage transactions. 

Howard can be contacted at hlax@lipsonneilson.com

Marketable Title vs. Insurable Title

by Allan G. Dick, COO, Best Homes Title

The term Marketable Title is often used in conjunction with Title Insurance. But, while insuring provision no. 3 in ALTA Owner's and Loan Policies provides coverage "against loss or damage... by reason of ... Unmarketability of the title", it does not guarantee perfect title. Nor does it even guarantee that the title is marketable. A title insurance policy is not a guarantee, but rather a contract of indemnity insuring against loss or damage suffered by the insured, should the title be determined to be unmarketable.


What, then, is the definition of Marketable Title? The Michigan Supreme Court has said that marketable title is title "free from encumbrance and is of such character to assure the purchaser the quiet and peaceable enjoyment of the premises". And, according to one Michigan Court of Appeals case, "title may be regarded as unmarketable, if a reasonably prudent person, familiar with the facts, would refuse to accept title, as presented, in the normal course of business."

But, why is Marketable Title of such significance? Typically, a purchase agreement contains provisions requiring the seller to provide evidence of marketable title. As John Cameron states in Michigan Real Property Law (12.11), "Prior to closing, a purchaser of real estate should ascertain that the seller holds marketable title by retaining the services of a lawyer to review title." Most commonly, reviewing title means reviewing the title commitment issued for the purpose of insuring the transaction. If the search and examination of the title by an attorney or title insurer, discloses a title defect – an unextinguished interest or lien on the title - the title may be deemed unmarketable.

Of course, these title defects may be extinguished at, or prior to, closing. But, if not, the title is technically *unmarketable*. It is possible, however, that a title insurer, under the right circumstances, might be willing to insure over such a defect, thereby establishing Insurable Title, even though the defect has not been cured of record. In this case the title would not necessarily be considered *marketable*. It would be *insurable*.



Since it is a common practice to come forward from a prior Owner's Policy, a defect, which was insured over by a prior insurer, may not be detected by the new title insurer. Again, the title is *insurable*, though technically *unmarketable*. But, title insurance has become the most generally accepted source of marketability information and coverage. So, what truly makes the title marketable? If the title is technically flawed – but insured – and the flaw in marketability is never challenged or even discovered, has not the title been marketable?

It ultimately depends on whether the purchaser of the interest in the land will accept a title policy, and the coverage contained therein, as sufficient evidence of Marketable Title. For practical purposes, if the purchaser accepts the title policy, Insurable and Marketable Title become essentially the same, even though they may not be identical. 

Rhoades McKee
attorneys & counselors

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MLTA Summer Convention 2008

by Connie Curio, Assistant V.P., Lighthouse Title Group

*Politics,
by-law changes,
bowling, room crawling...*

Sounds like a Michigan Land Title Association Convention doesn't it? From Sunday, July 20th to Tuesday, July 22nd, the Bavarian Inn in Frankenmuth was host to our annual convention. With a red, white and blue theme, conventioners were treated to a wonderful time and one of the best run events in recent years.

The Americana Reception (Sunday's icebreaker) was held inside due to an absolute downpour of rain, but that did not dampen the enthusiasm for the best PAC fundraiser ever. The Board Stiffs challenged the Alley Cats, the Bowling Stones, the Strike Zone and That's How Wii Roll. Doing what you ask? Well, the PAC Committee purchased two Wii systems and the bowling game to raffle off at the end of the competition. (see Wii bowling details in MLTA PAC article on page 11).



After the virtual dust settled, the Strike Zone won only to be challenged by three of the 15 and under in attendance: Joseph McDonnell, Tim (not the Dad) McDonnell and Alyssa Shubert.



The "slightly younger age group" trounced our best team! Also the best dressed team – the Alley Cats – whose red, white and blue shirts were very impressive – graciously donated their shirts to be auctioned off and even provided us with a bit of a fashion show to drive up the bids.



Our new President, Anthony Viviani, was installed Monday evening at the annual banquet along with Doug McFarlane as President – Elect and Tim McDonnell as Secretary/Treasurer. Newly elected to the Board were Bob Wuerfel and Diana Parker. Bob will be serving his second stint as a board member. Continuing to serve are Cathy LaMont and Robert Wineman with terms expiring in 2009, and Allan Dick and Marcy Welburn with terms expiring in 2010. Once again, we were honored to have the American Land Title Association present to install our board. Gary Kermott joined us and by all accounts thoroughly enjoyed his time in Michigan. His dinner partners included our immediate Past President Mary Lou Hartwell and Barbara Bush. (Mary Lou's mother – really!)



A well deserved Sarah Maddox Sutton was awarded the Robert J. Jay plaque, which recognizes outstanding leadership and contributions to the MLTA. Sarah has been instrumental in many committees and has spearheaded the MLTA's continuing education efforts.

Attendees enjoyed outstanding speakers. Mr. Kermott gave us the ALTA Washington Report and he was followed by Howard Lax, from Libson, Neilson, Cole, Seitzer and Garin PC. Mr. Lax gave us an extensive review of the Proposed Revision of RESPA Regulations. You had to be there. As he stated, what has been proposed so far should be changed somewhat before the actual implementation. However, a script to be recited by closers to the customers was included in his presentation. This would lengthen the closing by only about an hour or so. And it's possible that closers would have to COMPARE good faith estimates to the actual closing figures. If you would like more information contact Mr. Lax at hlax@lipsonneilson.com.



Once again, Tim Skubick of Michigan's "Off the Record" entertained us with his ideas regarding possible gubernatorial candidates for Michigan. And of course, our own Kwame Kilpatrick's woes in Detroit. Mr. Skubick has joined us several times and it also marks his wedding anniversary for him. Sarah Maddox Sutton from Fidelity National Title Insurance Company gave us a fascinating dissertation on the New "F" Words. Two of which are – of course – fraud & foreclosure. In 2007, Michigan ranked third behind Florida and Georgia. But in the North Central Region – Michigan was first. There are 32 FBI officers assigned to mortgage fraud across the nation. And there is a joint task force on mortgage fraud that consists of underwriters, agents, the FBI and the Michigan State Police. Our own Rob Wineman is the contact person for that task force.



Our final speaker, Robert Shook, is an author that had been an insurance salesman for 17 years. John Voso, Jr., Vice President with Old Republic National Title Insurance Company, interviewed Mr. Shook which was a different and entertaining style of presentation. Mr. Shook advised that "the best salespersons just stick to it" and gave many examples of how he learned to gain access and get interviews with many famous people.



The annual golf outing was ultimately called because of the pesky rain, but some teams managed to play all 18 holes.



The Golf Winners Were:

Best Mixed Team: Gary Jackson, Dan Lievois, John Voso & Kellie Blair
Best Team: Rod Eldridge, Jeff Basil, Pat Darden & David Martyn
Longest Drive • Men: Kurt Rydel
Longest Drive & Closest to the Pin • Women: Kellie Blair
Closest to the Pin - Men: Mike Hagerty



Our annual "room crawl" had two special guests – Cy Tope as Uncle Sam and own Mike Cole who does stand up comedy. Let's hope Mike makes a return visit!

While this convention has had the least number of attendees in recent years, (114 total – 73 members) it is probably just an indication of the economic times. As our new President, Tony Viviani said "Frankenmuth was a venue that appealed to shoppers, golfers and kids, so all in all, it was a great convention even with the smaller number of members who did attend."





Wii Bowling for PAC Dollars Strikes it Big for the MLTA-PAC at Summer Convention

*by Timothy J. McDonnell, Michigan Agency
Representative, Old Republic National Title*

The Wii Bowling for PAC Dollars event was a smashing success. Not only did it prove to be a successful fund-raising event, but the machines provided a lot of entertainment for the entire crowd with just about everyone giving it a try.

There were four teams involved in the competition and each team did a great job raising funds for the PAC. The semi-final rounds were held during the opening night cocktail reception. The teams were:
Board Stiff – Mary Lou Hartwell, Tony Viviani, Marcy Welburn (with Doug McFarlane as an Alternate.)
Alley Cats – Sharron Ardonowski, Diana Parker, Bob Wuerfel (with James Casson as an Alternate.)
Bowling Stones – Allan Dick, Margo Hannum and Jill Scholtz.
Strike Zone presented by Stroh's – Michael Donovan, Tim McDonnell and Phil Savich.
That's How Wii Roll – Ethan Powsner, Rob Wineman, Kevin Kossen and Meredith Weingarden.

The Alley Cats squared-off against Board Stiff in semi-final match number one. While the game was close at the start, Alley Cats pulled away down the stretch and ended up winning the match 130-89. In the second semi-final match, Strike Zone rolled against the Bowling Stones. This match was a barn-burner going back and forth right down to the last frame. Tim McDonnell had to get 3 strikes in the 10th frame after his teammates set the table in the 8th and 9th frames. The final score: Strike Zone 196-Bowling Stones 190.

The final match was played during the President's reception on day two on the convention. After several drinks and a few frames of warm-up, the teams were ready to go. The teams had a tough competition, but in the end, Strike Zone held off the Alley Cats for the championship with a final score of 166-113... **OR DID THEY?!?!?**

Just as Strike Zone was shouting "**Wii are the Champions**" and getting ready to open a celebratory bottle of Dom Perignon—okay Bud Light—a new team stepped up to challenge them. Alyssa Schubert, Joey McDonnell and Tim McDonnell a.k.a. Kid Zone decided to challenge the adults to see which team was the real champion!

Kid Zone took it easy on Strike Zone, but still won anyway. Final Score 200-139!!! And Alyssa, Joey and Tim took the championship trophies home while Strike Zone cried in their beers!

The two Wii Systems that were purchased for the competition were auctioned off to the highest bidder. One system hit the auction block on Sunday and sold for \$475.00 to Doug McFarlane. The second system was auctioned off after the finals on Monday and the winning bidder was Tim McDonnell also at \$475.00. The Alley Cats even auctioned off the shirts off of their backs to the highest bidders to raise even more money for the MLTA PAC. I guess you could say that **Wii** all had a great time with this fundraiser!

The two youngest members of the PAC Committee, Tim (14) and Joey (13) McDonnell were hard at work selling cigars for the PAC during the cocktail hour on Sunday and Monday evenings. Armed a box of 50 fine cigars at \$10.00 each, they raised \$250.00!!! Pretty soon they will be running the auction at the Winter convention!

Derek Dalling assisted PAC fundraising once again this year by providing and selling the Golf Survival PAC's for the annual golf outing. The Survival PAC's are a collection of items that will assist each team in improving their game. In other words, it is a bag of cheats! All teams took advantage of the cheats and this raised an additional \$140.00 for the cause. Thanks again, Derek!

In all, the Bowling for Dollars fundraiser generated over \$6,600 for the PAC! Combined with the cigar sales and the golf Survival PAC's we raised over \$7,000. When we add in the funds raised earlier this year, we have raised nearly \$10,000 for the MLTA PAC. This puts us at 50% of our annual goal of \$20,000.

There is still time to make a contribution to the MLTA-PAC. We would ask that all members consider making an annual contribution to the MLTA-PAC. Our PAC has raised an average of \$15,000 per year over the last few years. As an industry, I know we can do better than that. **Please support the MLTA-PAC—remember no contribution is too small!!!** 🍷

MLTA-PAC ANNUAL GIVING AWARDS

Each year the MLTA-PAC recognizes members who made contributions during the prior year that exceed designated giving levels. The five levels are:

LIFE: \$1000+
PRESIDENT: \$500—\$999
GOLD: \$350—\$499
SILVER: \$250—\$349
BRONZE: \$150—\$249

The following members were recognized at the Summer Convention; but, you can never say "Thank You!" enough. We would like to thank the following members and recognize them for their support of the MLTA-PAC in 2007! Awards were presented at the 2008 Summer Convention. If you were not present at the convention, your award will be forwarded to you by the MLTA office.

LIFE:

Pat Cwiek
Jerome Jelinek

PRESIDENT:

Doug McFarlane
John Tacia
Kevin Kossen
Tim McDonnell
Tony Viviani

GOLD:

Cy Tope
Sarah Maddox Sutton
James Collins
Bill Robinson

SILVER:

Lisa A. Cicinelli
Diana Parker
Allan Dick
Cathy LaMont
Chris Kindsvatter
Derek Dalling

BRONZE:

Bob Wuerfel
Dan King
Robert Meredith
Jacquie Brink
Sharron Ardanowski
Mary Lou Hartwell
Tony Alcala

10 Easy Steps to Prevent CLAIMS

by Meredith Weingarden, Michigan Agency Counsel,
Fidelity National Title Group

In our current environment, the pressure is on all agents and underwriters to prevent claims. The amount of claims received by the underwriters seems to be growing exponentially, a direct result of the craziness we've all felt in the past few years, contributed to by some nefarious characters lurking within the industry. Below are 10 pretty simple steps, which I believe will go a long way in keeping claims at bay.

READ THE LEGALS

It's pretty obvious that the legal description on the insured mortgage must match the legal on the deed under which your borrower has just taken title. But many of the claims I've seen are based on faulty legals.

Compare the legals carefully. Pay particular attention to subplot numbers which somehow seem to get transposed. Look for missing calls in metes and bounds description. Are the township references correct? Make sure there is a legal attached to the mortgage! And avoid whenever possible "cutting and pasting". A quick 2 or 3 minute review and comparison of legals will go a long way at preventing problems in the future.

DON'T WITNESS DOCUMENTS IN ABSENTIA

That's the fastest way I know to have a mortgage thrown out by a bankruptcy trustee. And, since Michigan now requires only a Notary and not separate witnesses, a Notary puts their license on the line by failing to be present at a signing. Don't extend a courtesy, even to your best friends. Friends sometimes fall out of favor—but the mortgage, you're stuck with.

QUESTION EVERYTHING

Is the corporation in title registered? Does the officer have authority to sign? Does a trustee have authority to sign? Is this person in your office for the closing who they say they are? Is the Power of Attorney legitimate? Is the person really overseas, out of the country, or unavailable? Is this contract just signed this morning? Are these deeds you are bringing in to the closing really signed by your elderly auntie?

If there is anything about a closing or a document you are unsure of, ask questions of the parties until you are confident in the answers. You are putting your agency at risk and your underwriter at risk when you don't investigate things that make you nervous, uneasy or unsure. Don't hesitate to call for someone else's opinion, and don't assume anything about a transaction or the parties thereto. "Trust, but verify."

AVOID RUSH TRANACTIONS

Trying to do anything in a hurry sometimes leads to careless mistakes. A job can be done quickly, but carefully. You can make the parties comfortable by telling them you are being deliberate to protect everyone in the transaction. The bottom line is, the deal will most likely close at the same time, whether it's rushed or whether it's done slowly.

RETURN TELEPHONE CALLS TO DISGRUNTLED CUSTOMERS

Everyone hates calls like that, including me. Many times people feel so aggravated by something, they become rude or demanding on the telephone. Nevertheless, try and keep the lines of communication open, even if it's to say "well here is where to send the claim." Whatever you do, don't ignore the problem—it will not go away and in the event of litigation, your non-responsiveness makes it look like there's something you're trying to hide.

DON'T GIVE OUT LEGAL ADVICE

If a customer has a question like "can I use this exemption to avoid transfer taxes"; "can you prepare a subrogation agreement for us"; "what does this clause in the mortgage or purchase agreement mean"; "my spouse is terminally ill should we transfer the property now", etc., don't answer it. Resist the temptation to give any advice which can be seen as interpreting the document and remember, most of the time we know nothing about the circumstances of the parties. Transferring a title now before the person dies is fine, but do you know the ramifications of that if they are very wealthy? Does transferring now adversely affect their estate plan? What is the basis of the property? If it turns out that the advice was wrong OR misunderstood, buyer's remorse can quickly turn in to "Let's call a lawyer and sue the title company."

It's also a violation of Michigan law to dispense legal advice in the first place, unless you are admitted to the bar and licensed to do so. You want to provide stellar service to your customers, but don't let them paint you into a box; they might throw you under the bus!

DON'T RELY ON "OLD PAPER" FROM A COMPANY YOU DON'T KNOW, DON'T TRUST, OR NEVER HEARD OF

Using an old owners' policy as a basis for an exam is a commonly used and widely accepted practice. However, do you know anything about the company on whose paper you or your examining staff is relying? Was their examiner as thorough as yours? Was it a place opened as a matter of convenience for an unscrupulous lender? Use a solid paper to start a solid exam. If the place that issued it is out of business, that may give you cause to question its accuracy.


CHECK PUBLIC RECORDS FOR JUDGMENTS AGAINST PERSONS IN THE CHAIN OF TITLE

Many times, especially in refinance transactions, a search will be done back only to a warranty deed of record. That's fine, but you need to also consider whether someone who is an immediate predecessor in title to your warranty deed has 17 liens against them, all to the State of Michigan, none of which have expired and none of which are discharged. This is a caution particularly applicable in those areas of the state where owners' policies are not issued as a matter of course. If you don't consider this, then when the State decides to foreclose, you and the owner are in for a rude awakening—because owners' policy or not, some owners may say "sue the title company."

KEEP ESCROW FUNDS IN THE ESCROW ACCOUNT

What more need be said?

KEEP YOUR E&O COVERAGE UP TO DATE

Claims happen. The claimant may not always be right, but they happen. Make sure your E&O policy gives you the coverage you need, when that multi-million dollar commercial deal walks through the door. 

The opinions expressed herein are those of the author and not necessarily those of Fidelity National Title Group or those of its affiliated companies.

MICHIGAN COURT OF APPEALS

UPHOLDS TITLE COMPANY'S DENIAL OF COVERAGE



by John C. Bommarito, Associate State Counsel, LandAmerica Financial Group

The Michigan Court of Appeals recently upheld a defendant title company's denial of coverage where a plaintiff sought to recover under the title policy after it conveyed the property by quitclaim deed to another entity and leased the same property back.¹

BACKGROUND

Proto-Cam, Inc. (plaintiff) purchased property in Grand Rapids, Michigan. At that time, it received an owner's policy of title insurance (presumably a 1992 policy) from Transamerica Title Insurance Co. (defendant). Sometime thereafter, Proto-Cam conveyed title to the subject property to Tenine Corp. by quitclaim deed. Tenine then immediately (or in conjunction with the conveyance) leased the property back to Proto-Cam. Proto-Cam and Tenine share common ownership and Tenine is the real estate holding and management company for Proto-Cam.

After the conveyance to Tenine, Proto-Cam had a dispute with a neighboring property owner and its contractor. Proto-Cam claimed ownership of the north half of the vacated street and exclusive ownership of the south half. The litigation ensued and Proto-Cam was only partially victorious. After the litigation, Proto-Cam made a claim under the title policy for the costs of this litigation. Transamerica denied the claim and the current case resulted when Proto-Cam filed suit to recover the costs.

ARGUMENTS & REASONING

The issue before the Michigan Court of Appeals was whether the title insurance owner's policy still provided coverage to Proto-Cam, even after it quitclaimed to Tenine. Proto-Cam advanced three primary arguments to support its position that the coverage continued.

First, Proto-Cam argued that the transfer to Tenine was by "operation of law" and that the policy does not define this term beyond distinction from "purchase". The argument was essentially that Tenine did not purchase the property, therefore this should be classified as a transfer by operation of law. The Court disagreed citing the fact that the policy does provide examples of what is intended by the term "operation of law" (i.e. inheritance). The Court further explained that under the policy, the term clearly encompasses what are considered involuntary transfers (i.e. "triggered by some legally significant event largely unrelated to the real property transaction"²) and the new party is a successor in interest. The Court draws the distinction between "transfer" and "convey". Here, the Court found that Proto-Cam voluntarily conveyed its interest in the real property to another entity and as such, the conveyance was not by "operation of law" as defined under the policy.

Second, Proto-Cam argued that when it conveyed the property to Tenine, it retained an interest in the north half of the vacated street and because of that, it remained an insured under the policy. The Court quickly denounced this argument by citing that the legal description in the title insurance commitment matched the legal description in the quitclaim deed. Thus Proto-Cam was found to have conveyed its entire interest that was insured by Transamerica, and even if it retained an interest, that interest was not insured by Transamerica.

Third, Proto-Cam argued that it retained an interest in the land even after the conveyance because of its leasehold interest. The Court dismissed this argument in saying that even while Proto-Cam may have in fact retained an interest in the use and enjoyment of the land, it did not retain an actual interest in the land itself. In fact, it conveyed its interest in the land itself to Tenine.

TITLE INSURANCE POLICY

The burden is on the insured to demonstrate that they should qualify as an insured under the policy. Proto-Cam's arguments centered around their attempt to be classified as an "insured" as defined by the title policy. Although the Court does not state it outright, based on the dates presented in the case, we can presume and be fairly certain that it was a 1992 owner's policy being discussed. As can be seen by the Court's decision, under the 1992 policy, Proto-Cam did not fit the definition of "insured" under the policy. Taking the same facts of this case into account, would Proto-Cam be considered an "insured" under the 2006 Policy?

To answer this question, it is necessary to look at how certain terms are defined under the policy. The term "insured" is defined under the 2006 owner's policy in the Conditions section, Paragraph 1(d). The definition is lengthy, but the relevant portion is reproduced here:

- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or...³

Unfortunately, the Court of Appeals opinion did not provide enough necessary facts to make a concrete determination as to whether Proto-Cam would still have been considered an insured by the 2006 definition above. This is likely due to the fact that the 1992 owner's policy definition of insured is not nearly as expansive as the 2006 form, and thus the Court did not see the need for that kind of detail. Basically, the 1992 policy limits its coverage to the insured named in Schedule A or its successors by operation of law (see court's discussion on this term above). Recall that Proto-Cam was the named Insured on Schedule A of the Policy. The Court's opinion does mention that Tenine and Proto-Cam do share common ownership, but that is the extent of any commentary on ownership. Fortunately, one of the litigating attorneys was able to illuminate this grey area. The extent of the relationship between the two is that Proto-Cam was owned by the same individuals who also owned Tenine. Beyond that commonality, the entities are entirely separate.

(Continued on page 14)

Beyond Fee Simple


by Michael J. Cole, Vice President & Agency Manager,
Independent Title Services

This is the 2nd of 3 segments on this topic to be continued in the next edition of the Title Examiner.

Leasehold Interests

Title insurance is available for a leasehold owner as well as its mortgagee. Frequently, the title insurance underwriter is asked what amount of coverage is appropriate for such an interest. This author recommends that insurance be obtained in an amount equal to the present value of all expected remaining payments to be made under the lease or 80% of the fair market value of the leasehold interest, whichever is greater. In the event the leasehold tenant will be constructing improvements, including expensive tenant upfit improvements to the existing shell, the policy may be obtained for the amount

of the improvements at the time the policy is issued, or later endorsed to increase the amount of coverage when said improvements are in place. This can be done without an additional examination of title, but the effective date of the policy will not be changed unless the title insurance underwriter receives an updated opinion on title.


When entering into a lease, the tenant will frequently have a title examination conducted in order to confirm they are dealing with the proper party. Many title insurance underwriters offer a discounted rate if both a fee and leasehold policy are obtained at the same time. 

(Court of Appeals - Continued from page 13)

Applying the 2006 definition of “insured”, in order for Condition 1(d)(i)(D)(1) to apply, the equity interests of Tenine would have to be *wholly-owned* by Proto-Cam. Similarly, in order for Condition 1(d)(i)(D)(2) above to apply, Tenine would have to wholly *own* Proto-Cam. The language of the court opinion does not reveal either of these to be true because the Court said the two entities *share* common ownership, which would leave one to believe that neither wholly owns the other. Further, based on the additional information revealed by counsel (confirming neither entity wholly owns the other), neither of these two sections would apply and thus, Proto-Cam would not be considered an insured under either of these two sections.

In order for Condition 1(d)(i)(D)(3) to apply, Tenine would have to be wholly owned by an entity affiliated with Proto-Cam *and* the affiliate and Proto-Cam would *both* have to be wholly owned by the same person or entity. Under the 2006 owner’s policy, “entity” is defined as “a corporation, partnership, trust, limited liability company, or other similar legal entity.”⁴ The term “affiliated entity” is not specifically defined anywhere in the policy. The two requirements of this third section appear not to be met because Tenine is not wholly owned by an affiliated entity of Proto-Cam. Rather the two entities are entirely separate and only share the same principle owners. Therefore, Proto-Cam’s conveyance to a functionally separate entity could likely still serve as the basis for a denial of coverage under this section as well.

CONCLUSION

The 2006 owner’s policy was created with a broader definition of the word “insured”. However, there are still limits to that definition and by reading the policy, it would seem that Proto-Cam would still not be considered an insured under the 2006 policy and would not be entitled to coverage. It is worth noting that the term “insured” under the 2006 owner’s policy has not been extensively litigated to date. 

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(Endnotes) 1 *Proto-Cam Inc v. Transamerica Title Ins Co.*; Mich.App. No 275505 & 276443 (2008), unpublished. 2 *Id.* page 3 of the Court Opinion. 3 Subparagraph 4 continues as the final section by discussing the transfer of property into a trust. 4 See Condition 1(c)

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Guest Speaker

Ed Rybczynski

to our FALL MLTA Education Seminar in
Mt. Pleasant on October 15th, courtesy of the
Fidelity National Title Group.



As a title agent, it's time to ask one simple question. Why doesn't the title community have a tradition of training its' own in regards to proper and ethical behavior? Prior to his conviction, Ed Rybczynski was a licensed title agent and the owner of a title company. During his presentation, Ed speaks candidly about his role in a well publicized-flipping scheme that resulted in his imprisonment in a federal prison camp. Ed's message is that fraud prevention can only be accomplished through personal accountability and responsible corporate citizenship.

Register for this event at www.MiLTA.org

MLTA 2008 Fall Education Seminar

AGENDA:

- 8:30 - 9:00: **Registration & Continental Breakfast**
- 9:00 - 9:05: **Opening Remarks & Announcements**
Allan Dick, MLTA Education Committee
- 9:05 - 9:15: **Legislative Report**
Timothy R. Ward, MI Legislative Consultant
- 9:15 - 10:00: **Short Sales**
Doug Smith, LandAmerica Financial Group
- 10:00 - 10:15: **Break**
- 10:15 - 12:15: **From Order Taker to Decision Maker**
Ed Rybczynski, Feature Speaker sponsored by Fidelity National Title Group
- 12:15 - 1:15: **Lunch**
- 1:15 - 1:45: **Ed Rybczynski - Question & Answer Session**
- 1:45 - 2:30: **Bankruptcy Basics - Compendium of Agent Questions on Bankruptcy Over the Years**
David Lerner, Plunkett & Cooney PC
- 2:30 - 3:00: **Trusts, Trust Certificates, Land Trusts and Custodial IRA Accounts**
Gregg Nathanson, Couzens, Lansky, Fealk, Ellis, Roeder & Lazar PC
Allan Dick, Best Homes Title
- 3:00 - 3:30: **Closing Protection Letters**
Lynn Sagar, Metropolitan Title, Division of First American Title



October 15, 2008

Mt. Pleasant, Michigan



*Registration is
available on-line at
www.MiLTA.org*

Mortgage Fraud: An Insider Shares His Perspective

by Ed Rybczynski, Rybczynski Consulting, LLC

Like it or not, you work in the field of mortgage fraud prevention. Every licensed real estate professional has an obligation to detect, deter, and report known, or suspected, fraud to the appropriate authorities. Recently, Bryant Tutas recounted a recent encounter with blatant fraudsters in a blog post entitled “[You want my Sellers to do what?](#)” Bryant’s methodology and actions exemplified the best practices that should be an integral part of the professional training that takes place in your offices. We all know, however, that it’s not the case.

Bryant’s example was riddled with telltale signs that something was very, very wrong.

They were:

- An offer came in at \$165,000 with a silent addendum explaining that the commission would be paid on the actual consideration of \$135,000.
- It was proposed that a Nehemiah type non-profit be used to funnel an exorbitant amount of money between the seller and the buyer in an FHA transaction.
- The mortgage broker got involved to explain the mechanics of the transaction and to ask for a manipulation of MLS records.

Don’t think for a minute that you’re immune to the charismatic qualities of many white collar criminals. Trust me, you’re not! These people are natural predators who know how to find human weaknesses and prey on circumstances.

Clearly, there were enough indicators of fraud present to cause concern. Most interesting to me was the early involvement of the mortgage broker. It leads me to believe that the agent who presented the offer along with the mortgage broker are part of a team that frequently orchestrates illegal transactions. It’s safe to assume that the appraiser and loan processor(s) are involved as well.

Let’s consider the anatomy of best practices that effectively deter mortgage fraud:

Separate the players from the facts.

The mortgage broker called Bryant to rationalize the situation and to see how cooperative Bryant would be. This is a common tactic among mortgage fraudsters who are often very charming and persuasive. Cache phrases are often used like: “everybody gets paid”, or “the buyer and seller get what they want”, or “tell me what’s wrong with the contract.” In effect, the criminal nature of the offer could easily be blurred by the noise level that’s intentionally created by the fraudster. Don’t think for a minute that you’re immune to the charismatic qualities of many white collar criminals. Trust me, you’re not! These people are natural predators who know how to find human weaknesses and prey on circumstances. The weak market and plight of many sellers are exactly the types of conditions that incubate fraudulent activity. Robert Greene’s book “[The Art of Seduction](#)” is a fascinating read for anyone who wants to learn more about the mindset of human predators.

Distance yourself from the situation to fairly assess the facts. When red flags are present you need an opportunity to think clearly. Don’t rush to judgment at this point. Bryant created a diversion by saying that a “fraud compliance company” was evaluating the agreement. “Blaming the empty chair” is a well accepted negotiation technique that buys the time needed to further examine a situation. I advise title agents to use their underwriters for this purpose. Real estate agents can easily use

their brokers. Very importantly, the person used as the “empty chair” must quickly be told that they were used in this capacity in case the situation takes on a life of it’s own.

Compare the circumstances in question to the normal flow of a contract.

Don’t be afraid to list the perceived problems with a transaction on a piece of paper. Create two distinct columns, one that shows things the way they should be and another that shows things the way that they appear to be. Richard Nixon did this often when making difficult decisions during his presidency.

Visual tools of this type are very useful in revealing the finer points of fraud. Bryant knew instinctively that a \$30,000 seller concession was ridiculously high for a legitimate Nehemiah type program, but confirmed his suspicions by calculating the percentages. Clearly, the buyer was looking for illegal cash back to payoff debt. Remember one simple premise when dealing with residential real estate contracts: You can’t do indirectly that which you can’t do directly.


Discuss the situation with someone else.

Every professional needs to have a trusted someone to rely on as a source of second opinions. The person can be a spouse, colleague, or friend. It’s not enough to write an email, the discussion has to take place in person or on the phone. You might find that answers present themselves while exploring your fears in an environment where honesty is the only expectation. It’s possible that the other person would simply listen without adding much to the dialog. Seasoned agents know enough to identify many red flags and sometimes need time to bring matters into a broader perspective; it’s the new agents or the improperly trained agents that need direction and leadership.

Take a stand.

This seemingly simple statement has far reaching implications. A professional license is essentially a social contract and a promise to protect the interests of others. I applaud Bryant’s concisely worded letter to the fraudsters and agree with the tactic. If you are not a broker, I strongly suggest that you involve management when the existence of fraud becomes apparent. Allow management to draft the letter to authorities and/or the suspected perpetrators of fraud. I usually recommend a verbal confrontation with fraudsters with a follow up letter to the FBI. But, each scenario is different and requires independent study. Often, I hear from people who have participated in the scheme to some degree and now want out. In that case, it’s time to have a very expensive conversation with a criminal defense attorney. The dynamics of saying no and reporting fraud far exceed the scope of a single blog post. In fact, I sometimes speak for hours about stepping back from a situation without creating legal liability for the professional and the client.

My best advice:

Listen to your inner voice and the core values that were instilled in you as a youth. It may sound ridiculously simplistic in these complicated times, but it always works for me. 

MIND CAPTURE MARKETING:

LESSONS FROM LA & JEFF BEZOS FOUNDER OF AMAZON.COM

by Tony Rubleski - President, Mind Capture Group



Los Angeles, CA – May 30, 2008

The book paparazzi were out in full force. TV crews and cameramen circled the stage like bees protecting their hive. A global audience was gathered in room 403A at the LA Convention Center last Thursday afternoon to hear Jeff Bezos, founder of Amazon.com, sell his latest product offering the Kindle at Book Expo America (BEA).

After an eight year sabbatical from the BEA show, Bezos entered the room from the left side of the stage, walked directly to the podium and began his talk. Sitting in the front row near the press core, 30-feet from the stage I quickly snapped a photo, grabbed my pen and settled in to hear, in my opinion, one of the top five business innovators on the planet over the last decade. There to discuss the Kindle, Amazon's new, wireless and portable, digital book device, his talk was well worth the price of admission.

As an author, avid reader, student and teacher of marketing, I listened to Bezo's talk as my ears and mind moved between an intense state of listening, to quickly writing down a key point here, a great quote there, and my own insights and observations. When he finished, my assessment of his speech was that he not only presented a captivating talk, but also a well thought out marketing clinic at the same time!

Fresh from LA, I bring you Five Powerful Strategies Employed by Amazon's Founder at Book Expo America that we can all use to improve our sales and marketing presentations.

LAW OFFICES
LAURA McMAHON LYNCH, PLC

LML
plc

Laura McMahon Lynch, licensed in Michigan since 1983, is a former Assistant Attorney General who represented the State of Michigan Homeowner Construction Lien Recovery Fund and prosecuted licensure violations by Residential Builders and Real Estate Brokers. Returning to private practice in 2000, Ms. Lynch now specializes in real estate related litigation and conflict resolution including:

- defense of title claims
- quiet title actions
- construction lien and bond claims
- mortgage foreclosures
- general debt collection

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1. The use of testimonials. To provide evidence that the Kindle wasn't just marketing hype, but worth paying attention to, he employed both printed and video testimonials to make his case. As I often mention in my books, live programs, and to clients, is that what others say about your product, service or organization is infinitely more believed than anything you say initially.

2. The use of "Reason Why Marketing". With the Kindle priced at \$399, he mentioned a price reduction of \$40 to the crowd and positioned it a very clever and unique way. After it sold out on the first day five months earlier, he stated that production was now ramped up and ready to keep up with demand and also that "he was excited to get the Kindle to more people."

Now ask yourself, when's the last time you heard a CEO say they were excited about having to lower the price of their product? 99% of the time a price reduction is framed as a negative or bad thing. Bezos nailed this test and I'm certain most of the room and the press missed his clever price positioning and logic to turn a potential negative point into a positive.

3. Sell speed and simplicity. Time after time he hammered home how you could order an ebook to your Kindle in less than 60-seconds via the built in wireless device. Two big things were going on here. We live in a digital age of instant access and massive choices. This makes us prone to impulse purchases and Amazon knows this.

Secondly, we're incredibly impatient and hate to wait. Downloading a book is quick and easy. This was stated over and over again. If it's a challenge, people are likely to get frustrated and tell others about their negative experience. This is the last thing you want early adopters with any product launch to experience and then quickly spread to their friends, associates and within the Internet community.

4. The use of celebrity. Make no mistake; we are a celebrity obsessed culture. Bezos employed a picture of the world famous writer Stephen King and his thoughts about Kindle to add not only 'star power' but massive credibility with the assembled audience of book influencers, publishers and media. Most people know who Stephen King is, so his comments carry even more perceived value to the mass market.

5. Passion about your product. Sprinkled within his message, he also mentioned some of the early critics when he dreamt up Amazon back in 1995 and how it related to current discussion about the Kindle. Regarding being a pioneer he stated, "You have to be willing to be misunderstood."

In the formation of Amazon many people thought he was nuts. Allies were few and far between, as were investors. The path to getting funding was over 60 meetings and a ton of 'no, we'll pass for now' comments after giving his pitch. His comment about being 'misunderstood' is key for people to understand in a marketplace buried in ideas.

His upbeat attitude is exactly what successful people have in common when they're passionate and relentless about their vision. Many of you may be thinking this is motivation not marketing. You're correct. The trick is that if you don't have motivation and aren't 100% sold yourself, often times your product, service or idea and the marketing to promote it will both die an early and unfortunate death. 🐼

Local Association	2008 Jul Sales	2008 YTD Jul # Sales	2007 YTD Jul # Sales	08-07 YTD % Change	2008 YTD Jul Ave Price	2007 YTD Jul Ave Price	08-07 YTD % Change
Alpena, Alcona, Presque Isle Board of REALTORS®	28	168	190	-11.58%	\$90,859	\$117,979	-22.99%
Ann Arbor Area Board of REALTORS®	349	1,772	1,745	1.55%	\$227,177	\$247,435	-8.19%
Antrim Charlevoix Kalkaska Association of REALTORS®	34	231	258	-10.47%	\$173,088	\$206,809	-16.31%
Battle Creek Area Association of REALTORS®	131	683	669	2.09%	\$102,814	\$122,562	-16.11%
Bay County REALTOR® Association	123	735	853	-13.83%	\$78,399	\$95,897	-18.25%
Branch County Association of REALTORS®	37	257	262	-1.91%	\$89,019	\$98,751	-9.86%
Central Michigan Association of REALTORS®	103	523	553	-5.42%	\$86,786	\$100,253	-13.43%
Clare-Gladwin Board of REALTORS®**	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Dearborn Board of REALTORS®	145	1,051	1,063	-1.13%	\$104,292	\$136,919	-23.83%
Detroit Board of REALTORS®	926	6,315	4,358	44.91%	\$19,313	\$43,625	-55.73%
Down River Association of REALTORS®	232	1,705	1,987	-14.19%	\$95,972	\$122,191	-21.46%
Eastern Thumb Association of REALTORS®	139	769	779	-1.28%	\$113,778	\$141,629	-19.66%
Eastern U.P. Board of REALTORS®	34	169	172	-1.74%	\$100,099	\$90,881	10.14%
Emmet Association of REALTORS®	35	282	297	-5.05%	\$285,021	\$267,960	6.37%
Flint Area Association of REALTORS®	446	3,078	3,308	-6.95%	\$87,574	\$111,802	-21.67%
Grand Rapids Association of REALTORS®	915	5,524	6,220	-11.19%	\$126,978	\$151,572	-16.23%
Greater Kalamazoo Association of REALTORS®	378	2,123	2,372	-10.50%	\$139,521	\$155,326	-10.18%
Greater Lansing Association of REALTORS®	572	3,022	2,994	0.94%	\$114,034	\$145,156	-21.44%
Hillsdale County Board of REALTORS®	48	268	281	-4.63%	\$82,285	\$101,270	-18.75%
Jackson Area Association of REALTORS®	162	812	894	-9.17%	\$84,970	\$119,319	-28.79%
Lapeer & Upper Thumb Association of REALTORS®	53	285	335	-14.93%	\$128,578	\$134,888	-4.68%
Lenawee County Association of REALTORS®	99	623	657	-5.18%	\$108,200	\$134,091	-19.31%
Livingston County Association of REALTORS®	220	1,113	1,133	-1.77%	\$189,354	\$208,613	-9.23%
Oakland	611	3,236	3,357	-3.60%	\$160,825	\$212,553	-24.34%
Macomb	714	4,228	3,754	12.63%	\$117,838	\$153,547	-23.26%
Mason-Oceana-Manistee Board of REALTORS®	103	504	469	7.46%	\$110,027	\$132,383	-16.89%
Midland Board of REALTORS®	79	478	639	-25.20%	\$158,246	\$160,473	-1.39%
Monroe County Association of REALTORS®	102	649	714	-9.10%	\$138,843	\$167,987	-17.35%
North Oakland County Board of REALTORS®	384	2,091	1,823	14.70%	\$159,390	\$196,082	-18.71%
Northeastern Michigan Board of REALTORS®	53	268	362	-25.97%	\$92,466	\$94,304	-1.95%
Paul Bunyan Board of REALTORS®	100	556	581	-4.30%	\$86,741	\$102,518	-15.39%
Saginaw Board of REALTORS®	137	938	1,094	-14.26%	\$88,872	\$99,535	-10.71%
Shiawassee Regional Board of REALTORS®	60	341	389	-12.34%	\$80,924	\$98,007	-17.43%
Southwestern Michigan Association of REALTORS®	237	1,453	1,748	-16.88%	\$182,008	\$193,256	-5.82%
St. Joseph County Association of REALTORS®	43	325	452	-28.10%	\$112,638	\$114,826	-1.91%
Traverse Area Association of REALTORS®	183	1,052	1,214	-13.34%	\$196,683	\$192,189	2.34%
Upper Peninsula Association of REALTORS® *	203	1,059	1,202	-11.90%	\$97,412	\$111,701	-12.79%
Water Wonderland Board of REALTORS®	102	520	656	-20.73%	\$113,232	\$129,054	-12.26%
West Central Association of REALTORS®	104	591	574	2.96%	\$90,762	\$107,798	-15.80%
West Michigan Lakeshore Association of REALTORS®	345	2,214	2,639	-16.10%	\$140,976	\$161,798	-12.87%
Western Wayne Oakland County Association of REALTORS®	935	5,090	4,864	4.65%	\$169,569	\$208,675	-18.74%
TOTALS	9704	57,101	57,911	-1.40%	\$123,139	\$142,290	-13.46%

*Escanaba, Iron Mountain, Keweenaw, Western Upper Peninsula, and North Central Upper Peninsula

**July data not available at time of posting

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Federal Tax Credit Should Boost Housing Market

by Jake LaDuke, Editorial Intern, Business Review

The new First-Time Home Buyer Tax Credit has the Home Builders Association of Greater Kalamazoo optimistic about the future of the Michigan housing market.

"This creates some certainty in the credit crunch," Dale Shugars, executive vice president of the HBAGK, said at a news conference this week. It "provides some security for investors, knowing that this is out there."

Shugars said the new legislation has three major components. The first part provides a \$7,500 tax credit for first-time home buyers, which is defined as someone who hasn't owned a home in the past three years. The second part provides more authority and money to bank-issued Federal Housing Administration loans, which now will guarantee up to \$300 billion for refinanced mortgages where current mortgage holders are willing to accept only partial payment of the amount owed.

It also helps provide stability in Government Sponsored Enterprises, such as Fannie Mae and Freddie Mac. The tax credit is retroactive to April 9, 2008, and extends to homes purchased through July 1, 2009.

There are some strings attached — a single homebuyer only qualifies for the full \$7,500 if his or her adjusted gross income is less than

\$75,000. This amount doubles for married couples. If a single person's income is between \$75,000 and \$95,000 (\$150,000-\$170,000 for married couples), then that individual qualifies for a portion of the tax credit. Any individual or married couple making more than the said amount does not qualify for the tax credit.

The tax credit "is, in fact, an interest-free loan, over a 15-year repayment," Shugars said. "For the first-time homebuyer, the \$7,500 credit (will provide incentive) for them to buy that home. It's a domino effect, and we're very optimistic about what that will do in the local market."

In addition to the \$300 billion provided for the compromised FHA loans, legislation also gives states new authority to issue an additional \$11 billion in bonds for refinancing subprime loans, mortgages for first-time homebuyers and multiple-family rental housing.

Shugars was joined by HBAGK President and State Director Jeffrey Smith who agreed the

legislation could provide a spark for local real estate and the construction industry. Smith warned that while the legislation is a boost, it is not a quick fix to the struggling market or people struggling to pay mortgages.

"It's not necessarily a get-out-of-jail-free card, either," Smith said. "They're taking federally backed money and putting it into the private sector that originated these types of loans that people are having a hard time with and forcing them to give up something in addition to have the government backing it."


"It's a partnership between federal government and (the) private marketplace," Smith said the government is forcing lenders to adjust the amount owed to closer reflect a home's value in today's market.

"They're not just going to give (money) to lenders to ease their pain," Smith said. "They're making them give up something as well. It's not just a gift." As for when the market will begin to show signs of bouncing back, Shugars is unsure.

"If I could answer that, I think the president would probably appoint me treasurer of the United States," Shugars said. "I don't think I can answer it other than it's going to get better."

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2009

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July 19 -21 Summer Convention
Amway Grand Plaza Hotel,
Grand Rapids



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