

INDUSTRY INSIGHT / KENNETH KUREL AND HEATHER MOLDOVAN

REORGANIZING PRIORITIES

ALTA's best practices set guidelines for REO properties

With regulatory momentum picking up steam, and with hot-button issues such as information security and privacy concerns remaining top of mind, some parties involved in the mortgage default servicing industry have taken proactive measures to address existing procedural inefficiencies and potential vulnerabilities. Lenders have begun to think seriously about the right way to implement formal standards and certification processes for title insurance agencies, and attorneys and title agencies have taken steps to engage in, and codify, best practices in anticipation of a more formal federal regulatory agenda in the not-too-distant future.

The American Land Title Association (ALTA) is responsible for one of the most significant new developments on that front, recently rolling out a set of approved best practices for title agencies, which were created to provide lenders with additional information about their title vendors. According to ALTA, these best practices are intended to serve as a set of guidelines. More specific, they serve as a formal reference/resource that member title agencies can refer to in order to ensure that the policies and procedures they follow are providing sufficient protection to both lenders and consumers, while ensuring an efficient and fully compliant real estate closing.

One implication of the best practices in particular directly impacts REO properties: establishing title curative measures. More often than not, REO properties do not have clear title, and the process for obtaining clear title can be time consuming if the proper documentation is not provided. A difference in the tax assessments, disputes between interested parties, and unreleased liens are just a few examples of issues that can cloud title. Such title issues not only complicate closings, but also extend the timeline in closing the REO sale. There also tend to be a lot of "hand-offs" when it comes to REO properties from the foreclosing attorney, eviction attorney, asset management companies, real estate agents and REO attorneys to the title company. Reducing these hand-offs will also reduce the risk of noncompliance and inefficiencies.

In that context, the new ALTA best practices are particularly important. Appreciating the scale and scope of these new ALTA guidelines and understanding how they might impact REO properties in particular is an important prerequisite to developing corresponding REO standards and practices that will ensure faster closings and consistent compliance.

"Title agencies have taken steps to engage in and codify best practices in anticipation of a more formal federal regulatory agenda in the not-too-distant future."

BEST PRACTICES

Formally issued in July 2013, the ALTA best practices list includes seven core principles:

1. Establish and maintain all current government licenses as required to conduct your business;
2. Adopt and maintain appropriate accounting procedures and controls which allow for effective daily reconciliation of all escrow trust accounts;

3. Adopt and maintain privacy and information security policies and controls which assure the protection of all non-public personal information in your possession;

4. Adopt standard internal policies and procedures which assure that all settlement documents are recorded as required in a timely fashion, and that the correct premiums are charged for title insurance policies issued;

5. Adopt procedures which guarantee the prompt issuance (production, delivery and reporting) of all title insurance policies which you are obligated to provide;

6. Obtain sufficient professional liability insurance and fidelity coverage; and

7. Adopt and maintain written procedures for resolving consumer complaints.

Upon initial review, very little about these guidelines seems particularly surprising. Most of these practices have been adopted or followed by responsible title agencies for some time now. The greatest benefit of the ALTA guidelines stems not so much from their novelty, but from their consistency. Lenders and vendors alike will benefit from the clarity and specificity of a delineated set of best practices. And, at a time when there is so much turbulence and uncertainty with respect to evolving legislative, procedural and technical standards, a formalized set of thoughtful best practices can help lay the groundwork for any regulatory framework that emerges in the future.

While there are bound to be obstacles and complications ahead, points two and three present particular technical and/or procedural challenges for some title agencies, and these seven ideals together go a long way toward reducing or eliminating some of the potential liabilities and inefficiencies in the default processing chain. While

these best practices apply to all title professionals, the implications with respect to REO properties are especially significant and suggestive.

The third standard in particular, which addresses information security and the protection of non-public information, suggests some REO-specific strategies and practices that lenders should be aware of, and attorneys and REO specialists should be working hard to make a similar standard part of their operational approach.

REO IMPLICATIONS

Among the ALTA best practices, perhaps one of the most important is the item emphasizing the importance of protecting the privacy of non-public information and urging the adoption of rigorous information security policies and controls. While some of those policies and protections involve robust and secure technical architecture, by far the biggest piece of the information security puzzle is procedural in nature. With that in mind, it becomes clear that the best way to limit the exposure of private information is to control how and how often that information is transmitted from one vendor to the next, as limiting hand-offs of each file between vendors is critical. In cases where an attorney has an existing professional relationship with a trusted and experienced title agency, file exposure can be controlled, security can be optimized, delays can be minimized and efficiencies can be realized.

EFFICIENCY AND CONSISTENCY

When one integrated network is processing a file from foreclosure to REO sale, the benefits in terms of consistency – no loss of compliance rigor from one institution to the next and efficiency – or no unnecessary delays or confusion surrounding access and permissions – cannot be overstated. Essentially, close coordination between attorney and title professionals can keep everything moving faster and more securely, with fewer redundancies and procedural or communications hiccups. Simply put, files can proceed

to closing in a quicker and more efficient manner.

SECURITY

The benefit of utilizing the same provider for both the foreclosure and the REO process is most evident when it comes to the protection of personal/non-public information. Non-public information commonly found on the documents used to clear title range from loan numbers to social security numbers. Sensitive information abounds in every file. The single best way to protect that information is by limiting exposure and transmission: The fewer times a file changes hands, the better.

COMMUNICATION AND CLARITY

Because a law firm has likely already handled the research and gathered the relevant background information on each file, that firm has a working familiarity with the file and is well positioned to address any issues that may arise during the title curative process. If the title agency has any questions about a lien, or needs to substantiate any information, the communication between the two vendors can be time-consuming and costly if they are not familiar with the file. This ultimately can result in unnecessary delays. It is important to keep in mind that often issues that are raised at REO are not actual title issues. Rather, they are just perceived title issues; and without knowledge and familiarity with the file, these perceived issues could significantly impede a closing when clear title could have been provided much sooner.

Other essential REO best practices to ensure faster closings and compliance include:

KNOWLEDGE, EXPERIENCE AND EXPERTISE

It goes without saying that knowledgeable and experienced attorneys and title agencies are more likely to deliver faster closings and more robust compliance protocols. The ALTA best practices list can serve as a checklist

to identify agencies that hold themselves to those standards and practices.

UNIFICATION

It makes sense to work with organizations that marry the legal and the title work – and do so in an effective and seamless manner. This type of setup will generally minimize inaccuracies, reduce inefficiencies, and eliminate the additional risk that inevitably enters into the equation when more people handle a file.

LICENSURE

Across-the-board licensure should be a priority for every title agency. Ensure that not only title examiners are licensed, but also managers, sales and marketing staff, and anyone and everyone who works on – or has access to – a file has the knowledge and the

formal credentials to perform that work.

RELATIONSHIPS

Relationships have value, and working with agencies that can leverage strong relationships makes good sense. Well-established relationships with assessors, county register of deeds offices, condominium/homeowner associations, and contacts with both the county and with local municipalities can go a long way toward helping solve some of the most common title curative issues that may arise. Tax assessment issues, for example, can be resolved if an agency has a productive relationship with the assessor and is able to work with that assessor to resolve the issue.

Privacy, data security and timely processing are the benefits of applying the ALTA best practices to REO work.

This not only gives peace of mind, but also makes every step in the process move faster, more securely and more efficiently, which makes a measurable and potentially dramatic difference to the bottom line.



Co-authored by Trott & Trott Partner Kenneth Kurel and Attorneys Title Agency Vice President and REO Division Manager Heather Moldovan. Trott & Trott is a Michigan-based real estate law firm and Attorneys Title Agency is a full-service title insurance agency with more than 30 offices in Michigan, Ohio and Indiana. Ken is available at kkurel@trottlaw.com, and Heather can be reached at hmoldovan@atatitle.com.