



## Three Steps to a Healthier Land Title Record System

# 1

**Eliminate conflicts of interest in real estate settlement services industry by modifying the Real Estate Settlement Procedures Act (RESPA) to prohibit affiliated business arrangements (AfBAs).**

Allowing real estate firms, mortgage brokers, banks, homebuilders and developers to select a consumer's settlement service provider based upon the financial incentive those referral sources receive for the referral is a detrimental harm to real estate consumers and an absolute conflict of interest. Amend RESPA to eliminate AfBAs and instantly provide real estate consumers with choice, lower closing charges and better services. Bolstering healthy competition for real estate settlement service work will lower prices paid by real estate consumers and force competitors to compete on the quality of their services, not the quantity of their kickbacks.

# 2

**Create a land title record grant program for state and county governments to improve their land title record data management.**

The Mortgage Electronic Registration System (MERS), a private corporate experiment gone awry, has siphoned tens of millions of dollars away from state and county government recording offices and prevented those public officials from investing in safer and more accessible land title record system upgrades and improvements. Create a grant program that would reward the most innovative public officials who, in tandem with independent land title professionals, could develop a necessary modernization program for land title records. The act of abstracting and examining land titles is a profession employing thousands of Americans across the country and a grant program would help preserve these jobs and protect our land title records.



# 3

**Extend the private right of action under RESPA Section 8(a) and 8(b) to a three year statute of limitations.**

Federal enforcement of RESPA and state enforcement of industry unfair competition laws is woefully inadequate. These weaknesses continue even after the U.S. Government Accountability Office (GAO) noted the failings in two industry studies in 2006 and 2007. Where enforcement fails to achieve necessary goals, the role of enforcer should be extended to a three-year private right of action under RESPA Section 8(a) and 8(b).



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## The Systemic Problems

- **Market consolidation and unfair business conduct is stifling competition in the title insurance industry.**

According to the American Land Title Association (ALTA), 90% of all title insurance business conducted in the United States is controlled by four national title insurance underwriters: First American Title Insurance Company, Fidelity National Financial, Inc., Stewart Title and Old Republic National Title Insurance Company. Prior to 2008, there were five such national title insurance underwriters, but the fifth, LandAmerica, went bankrupt in November of 2008. These entities not only control the amount and character of much of our national title insurance business, but they also dictate the control of land title associations, policy advocacy within the title insurance industry and the strategy to consolidate title insurance businesses with banks, mortgage companies, real estate firms and other referral sources unrelated to the insurance licensing process.

Small business owners, including title insurance agencies and regional title insurance underwriters, are unable to fairly compete with the policy and financial power exerted by the largest players in the industry. According to the U.S. Department of Justice and Federal Trade Commission's Herfindahl-Hirschman Index<sup>1</sup> (HHI), the title insurance industry is not a competitive market with an HHI index well beyond the competitive scale.<sup>2</sup>

- **Current federal law does not go far enough to advise consumers of the potential conflicts of interest that exist at the closing or how to shop for a settlement service provider on quality and price.**

According to a study conducted by the Ohio Association of Independent Title Agents (OAITA) in 2009 and 2010, Ohio real estate consumers do not prefer using settlement service providers that compensate for their referrals of business.<sup>3</sup> There are no other pertinent national case studies conducted of real estate consumers on these issues. The OAITA study concluded: "Title insurance agents lack meaningful access to Ohio real estate consumers concerning the merits and differences of their services. These inequities are enhanced by the referral sources and their advocates who promote CBAs and market consolidation as a further means to separate consumers from title insurance agents."

## About NAILTA

The National Association of Independent Land Title Agents (NAILTA) is a non-profit trade association that represents the interests of independent title insurance agents and independent real estate settlement professionals from across the United States. It was created by independent real estate settlement professionals to further the agenda of small business owners from within the title insurance, abstracting, surveying, and real estate community who lack representation at local, state and national levels.

To contact NAILTA, please visit our website at [www.nailta.org](http://www.nailta.org).

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<sup>1</sup> <http://www.justice.gov/atr/public/testimony/hhi.htm>

<sup>2</sup> <http://www.insurance.ca.gov/0400-news/0200-studies-reports/0100-market-share/>

<sup>3</sup> [http://www.oaita.org/OAITA\\_SPS\\_ExecutiveSummary.pdf](http://www.oaita.org/OAITA_SPS_ExecutiveSummary.pdf)