

Issue Date: October 20, 2008, Posted On: 10/20/2008
Title Insurance, The Title Report

Disfranchised agents march forward to form new association

While the theme of this year's 99th annual Ohio Land Title Association convention was "A United Title Industry," a faction of title agents disfranchised with current associations have mobilized a national effort to form a group exclusively for independent title agents and real estate professionals.

News of the Ohio Association for Independent Title Agent's inaugural meeting Sept. 8 stirred national attention from title agents who believe their needs aren't being met by current national and state land title associations. Robert Holman, counsel for OAITA, as well as an independent title agent and general counsel for regional underwriter General Title and Trust, said the new association received interest from agents in Minnesota, Colorado, Indiana, Pennsylvania, New Jersey, Maryland and Washington, D.C.

Seizing on the growing interest that it is time for independent title agents and independent real estate professionals to create a national independent organization and begin taking the policy fight to each of their respective states, Holman and about 15 other licensed title agents met Oct. 6 in Independence, Ohio. While a national association wasn't formed during the meeting, the group planned to push forward with its plans and will meet again Nov. 10 in Pittsburgh.

The group discussed many issues impacting title agents, but focused on affiliated business arrangements and competition from underwriters. Holman compared today's environment with the Revolutionary War, saying the parallels are no different than where the country was in 1775.

"We are attempting to fill the void that exists in our industry," he said. "It's important while putting together a national association to not only think about your own interests, but what's good for all of us. What does an independent title agent, examiner, appraiser or surveyor need in this environment?"

He said if nothing is done to protect the independent title agent, at least in Ohio, "there's a very good chance, better than 50 percent, we won't have an independent title insurance agency within six to 12 months."

"Without a real voice, with all due respect to the land title associations that have been charged historically with that responsibility, the response was inadequate," Holman said. "This is an attempt to cater directly to that voice before it goes extinct."

Survey supports concern

According to studies conducted by The Title Report's parent company, October Research, there is a growing demand for a national trade association exclusively for independent title agencies. According to the 2004 Independent Title Agent Survey (ITAS), 42 percent felt there should be a national trade association serving agents, while 46 percent said there shouldn't be a separate association. Twelve percent had no opinion. Fast forward to 2008, and 62 percent of those asked believe there is a need for an independent title association, compared to 10 percent who disagreed. Twenty-eight percent were neutral.

Ian Katz, president of Pennsylvania-based CU Abstract, and Doug Miller, founder and former president of Minnesota-based Title One and current executive director of Consumer Advocates in American Real Estate, shared similar thoughts regarding AfBAs and their belief current associations cater to the national underwriters' needs, while regulators ignore the independent title agents' plight.

"As far as the insurance commission goes in our state, they don't really care about us," Katz said. "The business of title insurance is our problem. They are concerned with the consumer and how it impacts them. We need to focus on how allowing controlled business affects the consumer in an adverse way."

Miller said the main emphasis should be to get the checks-and-balances put back in place. He believes

AfBAs insert a conflict of interest in the transaction.

"The problem isn't just controlled business, it's the way we get our business," he said.

It doesn't appear the negative perception of AfBAs is limited to agents attending the meeting. According to the ITAS survey, 11.9 percent said AfBAs were their top concern to the industry's well-being. That sentiment has increased slightly over the past four years.

But while feelings have turned against AfBAs, there appears to be more partnerships being formed. According to the survey, 61 percent of agents said they don't have any affiliations, while 34 percent said they do. In the 2004 version of the survey, 80 percent said they didn't have an AfBA, while only 18 percent admitted they did.

Finding the lily-white agent

Miller attempted to establish a similar association a few years ago, but became disheartened because he said it's difficult to decipher which agents are in relationships and who's not. Katz agreed. He said there are very few "true independents" in Pennsylvania. He then admitted that for the longest time, he felt very independent, but isn't so sure now.

"But I've been looking at myself very critically and I'm not as independent as I would like to believe that I am," he said. In fact, Katz's company is partially owned by Freedom Credit Union.

The discussion of who are "true independents" led into talks of who would be eligible to join the association. The group appeared in agreement to allow underwriters to join, but not have any voting rights. They also seemed in agreement to allow agents with AfBAs and other service providers.

Some initial mission statements proposed included promoting the enforcement of state and federal real estate laws, upholding standard of fiduciary duty and reducing conflicts of interest in the real estate transaction, implementing checks and balances, and providing consumer education.

John Voso, a licensed agent in Ohio who works for a national underwriter and is past president of the Ohio Land Title Association, was in attendance because he wanted to know what was going on. He was surprised other title association representatives didn't attend.

"I know underwriters put money into the associations, but I have never known the OLTA to lobby on behalf of the underwriters," said Voso, who is the national chairman of TIPAC and serves on OLTA's PAC committee. "We have agents that contribute a lot of money and underwriter employees that contribute nothing. So there are agents that believe in the lobbying efforts of ALTA and OLTA."

Stacked deck?

In Pennsylvania, according to Katz, the deck is stacked against independents. He said the current voting structure of the PLTA is weighed in favor of the underwriters. Katz said the most votes the independents could garner is 18, while the underwriters have 20 votes locked up.

Last year's PLTA president, Dallys Novarina, persuaded the executive committee to approve an agents committee, on which Katz serves.

"The only thing we were allowed to talk about was to bring in new members and education," he said. "We already had a membership committee and education committee."

Dave Dwyer, vice president and state manager of New Jersey Title Insurance Co., put the blame for the deterioration of many of these areas on the national underwriters.

"I don't know why we don't all see it starts with the underwriters and it ends with the underwriters," he said. "If there was an independent association that said 'look we command \$30 million of your remittance in six states, and unless you conduct business this way, we will tell our constituents to use different underwriters,'"

that would have a huge impact. This is the perfect time because all the underwriters are dying out there.”

While there is a segment of the industry that agrees the underwriter/agency model doesn't work, some experts don't put the entire onus on the underwriters. Due to competitive pressures, most underwriting agreements have low liquidated damage provisions. The prolonged market expansion and historic profits lowered most “splits” to untenable levels. Agents end up paying a small percentage of any loss, and are not motivated to exercise appropriate discipline.

“Underwriters are not making enough on these relationships to warrant the risk and losses incurred,” said one representative of a national underwriter. “Additionally, the pervasive use of insured closing letters has left underwriters responsible for agents accounting and money management practices. The surge of recent losses, and plethora of defalcations, has made most underwriters rethink their agency relationships.”

Recruiting tactic?

Some within the ranks of ALTA question the motives of General Title and Trust, suggesting the push for an independent agent association is a business model to recruit new agents. Examining OAITA's trustees, all are agents or employees of General Title. Holman is the underwriter's general counsel, while Doug King (president), Kim Himmel (vice president), Angelo Russo (trustee), Steve Squeo (treasurer) and Robert Myers (trustee) are all agents of General Title. All but Myers attended the inaugural meeting to form the national association as well.

When asked whether OAITA and the national movement was an attempt to recruit new agents for General Title and Trust, Holman did not provide a specific response to the question, but said he was “humbled and honored to be criticized by faceless and nameless persons in the title insurance industry. It tells me that no one in our industry has the courage to come out of the shadows and admit the truth of what's been happening in our industry. Namely, that none of the major players — underwriters or land title associations — are willing to save the independent title agent from the fratricidal nature of our industry.”

Holman said it shouldn't surprise anyone that General Title and Trust, which is licensed in Ohio and Indiana, is interested in helping independent title insurance agents by allowing its counsel and agents to join an effort to save the independent title agent.

“In the last two years, title agents began closing and being picked off by competitors and I took the position that something had to be done,” Holman said. “Each of the land title associations does a great job of talking about broad issues, but no one speaks to core issues an independent title agent faces. They may do it in committees, but not as a sole mission.”

Land Title Associations answer back

Mike Pryor, CEO of Arkansas-based Lenders Title and president of ALTA, said he is always happy to see title agents willing to actively engage in the representational process. Often, he said, agents don't find their voice until threatened. He does, however, believe issues raised by independent agents are being heard.

“It is no coincidence that in these challenging times, agents are seeking a way to be heard,” Pryor said. “The agent's voice is clearly being heard at ALTA. We are seeing a resurgence of agent interest as evidenced by the response to our recent RESPA call to action. Anyone who has been within earshot of my recent state association appearances, or familiar with ALTA CEO Kurt Pfothauer's leadership, or has knowledge of the activities of ALTA's Agent and Abstracter Section, cannot question ALTA's commitment to agents.”

While he understands OAITA's desire to form its own national association, Pryor said reaching lasting progress is impossible in a state of seclusion. ALTA's strength over the past 100 years has been its participatory breadth, he added.

“I believe ALTA still remains as the single best opportunity for independent agents to exercise their voice,” Pryor said. “There is always room at our table for anyone wishing to engage in a productive dialogue with other industry stakeholders. That's how things can best be influenced — with all stakeholders at the table.”

Scott Stevenson, president of Ohio-based Northwest Title and president of OLTA, echoed some of the same

thoughts as Pryor. He said there has been a resurgence of interest in OLTA from independent agents, which comprised 76 percent of the association's annual convention in September.

He said OLTA's mission throughout its 99-year history has been to promote the educational, ethical, professional and legislative interests of its members while fostering an open environment for the free exchange of ideas.

"All agents, underwriters, service providers and supporters of our industry should know that OLTA exists for all of us," Stevenson said. "But attendance by its members at OLTA events is the only way we can speak with one voice."

Agents' last stand

Robert Franco, owner of Ohio-based VersaTitle Services, said the goals of OAITA are laudable. While attending conferences the past several years, he's noticed agents congregating and expressing disdain for AfBAs. What never occurred before, he said, was a real solution until the OAITA filed its lawsuit against the Ohio Department of Insurance.

"The independent agents haven't gotten much support from their underwriters or the traditional land title associations," he said. "As a new organization, the OAITA is not large enough to address AfBAs through lobby efforts — they could never out-lobby the National Association of Realtors. They really don't have clout with the DOI to effectuate change, especially given the fact that the traditional land title associations aren't behind them on this issue. When the 'mainstream' title industry seems fine with the status quo, the DOI is not compelled to take strong action."

Franco, a founding member of the National Association of Land Title Examiners and Abstractors, understands the struggles to form a national association. He admitted this organization has significant advantages over NALTEA.

"First, the agents are financially stronger than the abstractors and they can adequately fund a national effort," he said. "Second, they have attorney members who are able to volunteer their professional expertise to pursue their goals through litigation. And, third, they have focused in on one dominant issue that is shared by independent agents that will help unite them."

Judy Sasfy, founder of Michigan-based The Independent Title Agent Network, said AfBAs have tipped business away from local agents in favor of the underwriters.

"When you begin sharing profits with the customer, the underwriters have the ability to put more dollars on the table than an agent does," she said. "Typically, when a new AfBA opens, local agents are the ones that lose business. This is one reason why TiTAN is focused on developing ways to help agents capture business that they previously were not able to capture. We want the agents to not only survive, but to thrive because; we believe they provide the best service to the consumer."

TiTAN has enjoyed success with its model — which is a co-op of title agents referring orders between members. Nearing its first year of existence, TiTAN has members in 32 states and more than \$500 million in orders have been placed through the organization. Sasfy doesn't believe General Title and Trust's support of a national association for independent agents is a ploy to recruit agents. She believes there are still some small, regional underwriters focused on supporting independent agents. Sasfy compares the agent-underwriter dynamic to other businesses that have a retailer and wholesaler competing for the same dollars.

"In today's market, so many agents find themselves in competition for business with the top-tier underwriters," Sasfy said. "I imagine the reason for forming this group has more to do with helping the independent agent first survive in these challenging times and then thrive through the recovery, rather than as a tactic to sign new agents."