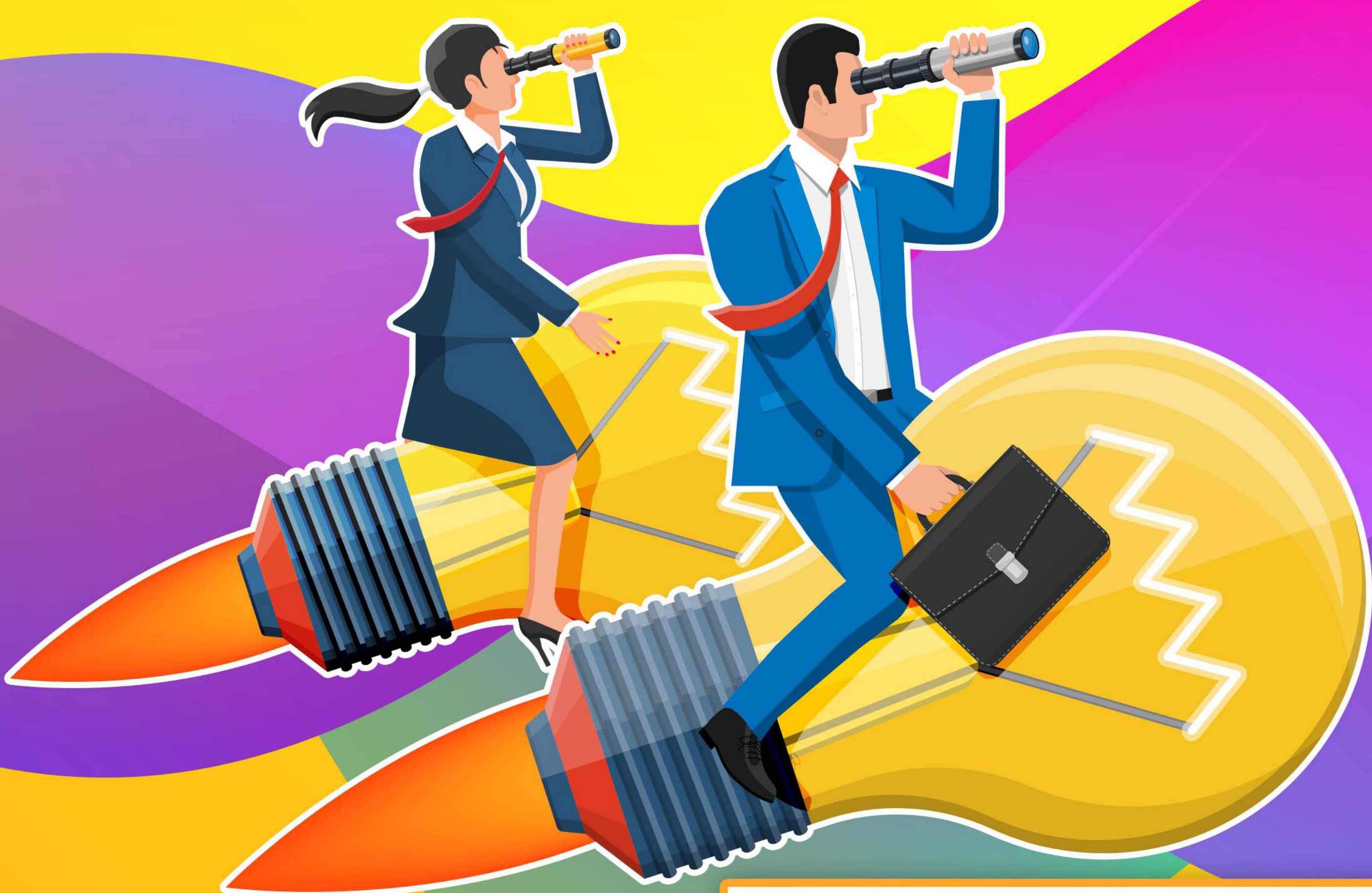
January 2022

STATE OF THE INDUSTRY

special report



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ABOUT US

Contact information:
October Research, LLC
ATTN: The Title Report
3046 Brecksville Road, Suite D
Richfield, OH 44286
Tel: (330) 659-6101
Fax: (330) 659-6102
Email: contactus@octoberresearch.com

CEO & Publisher
Erica Meyer

Editorial & Publishing
Editorial Director
Mark Lowery

Editors
Elizabeth Childers, *Dodd Frank Update*
Andrea Golby, *The Legal Description*
Mike Holzheimer, *Valuation Review*
Erica Peterson, *The Title Report*
Tracey Read, *RESPA News*

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Circulation / Customer Service
Kathy Hurley

Business Offices
Sam Warwar, Esq.

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EDITOR'S NOTE

Continuing to bring you important trends

Dear Readers,

For more than two decades, October Research's publications have reported on the important news and trends impacting the real estate transaction. The unique ability to work with all the key players and analyze the transaction from a comprehensive perspective is what sets our coverage apart as the industry leader, and why you rely on us as your independent news source throughout the year. We are excited to once again bring you the 2022 *State of the Industry* special report.

Last year was one of the best years ever for title agencies, underwriters, Realtors, loan officers and their various business partners, despite the ongoing COVID-19 pandemic. The combination of relatively low interest rates and housing supply shortages drove prices to record highs and fueled bidding wars for homes.

Rising interest rates and foreclosures are expected to moderate things this year. Still, most housing experts expect 2022 will be another prosperous year for the industry. Our *State of the Industry* special report gauges the environment for the next year and spotlights those issues which need to be monitored, including RESPA compliance, adaptation in the appraisal space, forbearance programs, the expected regulatory focus from Washington and data privacy and cybersecurity concerns.

This special report can serve as an important resource for your company. Thank you to our sponsors Qualia and TrustLink.

Mark Lowery
Editorial Director
mlowery@octoberresearch.com

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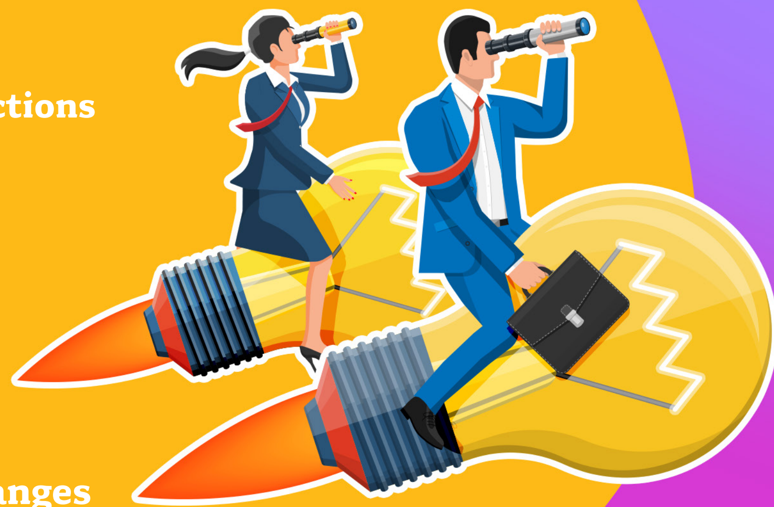

Industry experts share their predictions for 2022 housing market

THE TITLE REPORT

By Erica Peterson — Editor, *The Title Report*

The title industry enjoyed an unexpectedly strong housing market in 2021, fueled by historic low interest rates and a particularly healthy refi business. Industry experts who spoke with *The Title Report* predict a less robust market in 2022, with higher mortgage interest rates and lower refi volume.

WFG National Title Insurance Co. founder and Executive Chairman **Patrick Stone** said he expects refinances will drop about 40 percent.

"That is a cautious estimate, but in line with what is predicted by Fannie Mae, whose predictions are typically most reliable," he said.

Even so, refi business will remain significant, Stone predicts.

"Refinances will still account for at least 20 percent of all volume. It is worth noting that refinances have only been less than 20 percent of all premiums in one year since 1991," he said.

Housing affordability is also expected to drop in 2022.

"House prices are expected to remain positive, but moderate from the pace we've seen in 2021. Thus, buyers will likely still face an ongoing, but less intense, sellers' market," First American Deputy Chief Economist **Odeta Kushi** said.

"While mortgage rates will likely remain near historic lows for the foreseeable future, they are widely expected to rise in 2022 as the economy continues to improve. If double-digit annual house-price growth persists in combination with modest increases in mortgage rates (holding income constant), there will be a negative impact on affordability," Kushi said. "This may prompt some buyers to pull back from the market and sellers to adjust their price expectations, which may result in a moderation in house prices."

ATTOM Chief Product Officer **Todd Teta** said he expects home prices to increase into early 2022.

"While things usually slow down in the fall and winter, with interest rates still super low and no sign of demand dropping off amid a tight supply of homes for sale, upward pressure on prices is likely to continue short-term," he said. "Prices have spiked this year by double-digit rates every quarter, so it would take a significant change to reverse that course.

"Beyond that, there are many questions hanging over the market, including the path of interest rates, the stock market, the pandemic and the economy, as well as the continued willingness of homebuyers to keep paying soaring prices," Teta added. "If things keep going as they are, prices should continue to rise, especially with interest rates so low and the stock market providing the resources for hefty down payments. But if we get another COVID wave (it looks like that's starting to happen) and the number of households unscathed by the pandemic wave taps out, or the stock market falls from its record highs, that could certainly tamp things down."

Redfin Chief Economist **Daryl Fairweather** predicts mortgage rates to slowly rise from around 3 percent to around 3.6 percent by the end of 2022.

"By winter, higher mortgage rates along with already high home prices will likely slow annual price growth down to around 3 percent, which represents a steep drop from the record 24 percent increase posted in May 2021," she said in a release. "This low price growth will likely allow more first-time buyers to have a chance at winning a home. "

Fairweather also expects a rush of homebuying at the start of the year, before mortgage rates rise.

"That early onslaught of demand will deplete the supply of homes for sale," she said. "In the second half of the year, a much-needed increase in new construction will boost sales slightly. In 2022, there will be 1 percent more sales than in 2021, and by the end of the year, home price growth will slow to 3 percent."

Kushi said she expects the current housing inventory crunch to extend into 2022, especially in light of ongoing supply chain issues.

"Homebuilders are working hard to bridge the housing supply gap created by a decade of underbuilding, but it will take time to reduce the housing stock 'debt,'" she said. "However, homebuilders have a lot of homes in the backlog that they haven't been able to complete and bring to market due to supply chain constraints on building materials and appliances. If supply chain issues fade, those new homes will come to market and add some supply relief."

> **"We know demand will exceed supply for the foreseeable future, and while that means continued upward pressure on prices, I think we're nearing the higher end of affordability in a lot of markets."**
>
> **— Patrick Stone,**
> **Founder and executive chairman ,**
> **WFG National Title Insurance Co.**

Stone said economists predict an uptick in home prices by anywhere from the 4-percent-to-6-percent range to 14 percent to 16 percent.

"We know demand will exceed supply for the foreseeable future, and while that means continued upward pressure on prices, I think we're nearing the higher end of affordability in a lot of markets. I see appreciation slowing down, considerably in some markets, so I am with those anticipating a 4-percent-to-6 percent increase," he said.

Kushi said she expects millennial homebuyers to continue to drive the housing market in the new year.

"Millennial demand is expected to continue to buoy the housing market in 2022, as the largest and most educated generational group in history continues to age into their prime homebuying years," she said. "The pandemic and the shift to work-from-home, which has untethered workers from the office and removed geographic limitations for many potential homebuyers, may further drive housing demand. Higher wages from an improving economy (all else held equal) would similarly drive this momentum forward by boosting house-buying power."

Fairweather said that though she predicts new home listings will hit a 10-year high next year, that will barely make a dent in the housing supply shortage.

"In 2022, new listings will surpass the 2018 high of 7.6 million homes, setting a new record going back to at least 2012," she said. "As the market becomes more balanced, homeowners will find it less daunting to list their home while looking for a new one to buy. Home-sale contingencies, which allow a homeowner to make an offer to buy a new home on the condition that their existing home sells first, will become more common."

The end of foreclosure and forbearance moratoriums put in place during the pandemic will also influence the market next year, the industry experts said.

"Home affordability has worsened recently and foreclosures are on the rise now that lenders are again free to go after homeowners far behind on mortgages payments," Teta said.
"Major ownership costs on the typical home nationwide still consume just 25 percent of the average wage but is pushing closer to the 28 percent level lenders often use as a benchmark for giving mortgages. And, with foreclosure activity up in November by 94 percent from a year earlier, further increases could lead to a flood of empty homes on the market, which would raise supply and lessen the bidding wars we are seeing throughout the country."

Stone said it's important to realize that this is a different situation than during the Great Recession.

"This appreciation has been demand-driven: There is no product risk and very little credit risk," he said. "About 99 percent of all homes now have positive equity. If you go back to the lead up to the Great Recession, we had subprime mortgages and all kinds of stated-income products. Loans were going to people who couldn't repay.

"The forbearance program gave people more time to adjust to the pandemic-driven economic disruption and job losses. During the time their homes were in forbearance, they benefited from significant appreciation, so very few homes are underwater from an equity point of view," Stone said. "As a result, I estimate that total foreclosures as a result of the pandemic will total about 300,000 — less than 10 percent of what we saw as a result of the Great Recession. Most of those foreclosures will occur in the next six months."

As for the title industry specifically, Stone told *The Title Report* he expects 2022 to be another good year for title volume, though not quite as good as the record-setting last couple of years.

"The recent record title volume capped a healthy buildup. In 2016, 2017 and 2018, annual premium totals were in the $14 billion range. They edged up to about $15.8 billion in 2019 before reaching the record of $19.2 billion last year. This year's numbers should be close to that, and I would estimate another good year in 2022 with totals in the $16 billion to $18 billion range," Stone said.

All in all, he said, he is confident the title industry is secure.

"Title agents will remain very pertinent to the real estate process, especially east of the Mississippi. This still is a highly regulated business, in which each state's business practices and regulations are different," he said.

Those agents and agencies that keep up with technology and cybersecurity developments will be the most successful, he said.

"Title agents will not get left behind or outpaced if they pay attention. One thing you don't want to do is sit back and wait to see what happens. You don't have to be ahead of the herd, but you want to make sure that you're staying abreast of what's happening, and that you adapt quickly," Stone said.

Regulatory focus on data privacy, cybersecurity to continue

By Andrea Golby — Editor, *The Legal Description*

THE LEGAL DESCRIPTION

With an increased reliance on electronic ways of conducting business, there was even more scrutiny on data privacy and cybersecurity in the last year. Regulatory oversight in these areas will only increase in the coming year and will touch several aspects of business, from lender requirements to the continued movement toward entirely electronic transactions.

More state privacy requirements

Data privacy has been a focus of state legislators and regulators over the last few years and that will not change in 2022.

"I think privacy is going to be the major thing because all state regulators, no matter what industry they regulate, are looking hard at privacy requirements," said **Charles Cain**, senior vice president—National Agency, FNF Family of Companies.

"I think privacy is going to be the big thing that everyone is going to be mindful about what their state is going to require of a title and settlement agent."

Craig Haskins, chief operating officer, Knight Barry Title Group, agreed.

"Our friends at ALTA expect a sizable number of states to look at data privacy bills in 2022," he said.

"The pressure to give consumers 'opt-in' instead of 'opt-out' control on how their data is used is only increasing. The title industry needs to prepare for the likelihood that policymakers will not just keep the status quo but will include title and settlement companies in the slate of industries covered by the data security measures, including reporting requirements."

Deborah Everett, chief legal officer, Holler Law Firm LLC, said more and more states are going to have full blown cybersecurity laws that the industry will have to comply beyond the simple security breach reporting requirements.

Trickle down requirements

The Consumer Financial Protection Bureau is under new leadership. It is too early to tell whether the title and settlement industry will be looked at directly, but it will likely feel the impact of actions taken involving mortgage lending.

"I don't see, outside of RESPA issues that may arise, our industry is going to be a direct target of the bureau," Cain said. "I think there are going to be a lot of things, particularly involving mortgage lending, that will create issues for our industry and will lead into the title industry, and a lot of that as the regulators make requirements

for both bank and non-bank lenders. I think we'll see more of those things become issues for us as to our relationship with our lender customers."

Cain gave an example from this year regarding new cyber incident notification requirements that were issued in November by the Federal Reserve, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp. that require lenders to report any cybersecurity breach to the appropriate federal regulator no later than 36 hours after the reportable event occurred.

"That's a pretty tight time frame," he said. "If something happens at 2 am on a Saturday morning, that means that that has to be reported back to the regulators on Sunday. I think lenders are going to ask title and settlement providers for that type of timeframe, if not a tighter, shorter timeframe, to notify the lender of any sort of reportable event to the lender so the lender can then report that upstream to their regulator."

Cain said he thinks the industry is going to see more and more lenders tighten up requirements regarding data breaches that happen at the title and settlement provider.

Chris Gulotta, founding partner and CEO, Gulotta Grabiner Law Group and Real Estate Data Shield, said these increased lender expectations are apparent with the broadening scope and validation requirements evident in their annual audits.

"Their audits are not what they were 10 years ago," he said. "They are not what they were five years ago. They are much more involved, require more time to complete and more proof of compliance."

Gulotta said lenders are requiring agents to validate their statements. For example, you can't just say you have a business continuity policy or a cybersecurity policy, you have to show evidence of that. If your policy says you restrict internet access to work-only websites, you must send screen shots proving they are blocked on every user.

Ryan Cabrita, information security officer, Gulotta Grabiner Law Group, said cyber insurers also are diving more in-depth into companies' security measures, drilling down into how much paper and electronic data the company houses, and how that data is backed up.

"These questions are not coming out of nowhere," he said. "These questions are coming because they had a lot of information security or wire fraud claims that could have been prevented if the cyber insurance provider was aware that these companies were not taking the appropriate safeguards to protect the data and/or funds that were lost."

To prepare for changes in lender requirements in the data privacy area and other aspects of business, Cain suggested people take fresh looks at their lenders' closing instructions.

"After the first of the year is always a great time for closing instructions to be amended and modified," he said. "I think every title and settlement company needs to take a close look on a regular basis at both per-file closing instructions and master closing instructions as to what the lender is requiring. Lenders are getting squeezed down hard by the regulators that if there is a cybersecurity issue that leads to a privacy breach that they've got to report it very promptly and they are going to want their service providers [to follow those same requirements.]

"I think the major thing is that everyone is going to have to take a look at what they are doing," Cain said. "If they are not up to speed, they are going to have to spend some money and meet the requirements of their customers, of the regulators. I think many people have not invested enough into cybersecurity and they are going to have to or they are simply not going to be selected to be a service provider by a lender."

The continued march toward "e"

The movement toward completely electronic transactions will continue steadily on in 2022.

Cain noted that one appeal of electronic transaction is the quality assurance that is built into these transactions. He said this makes the loans more enticing to servicers who acquire these loans and reduce the costs. This makes electronic transactions more attractive to community-based lenders.

"I think we are going to see a pickup in the community lending space in regard to electronic transactions, and I think we are going to see more and more demand that those lenders can integrate with their title and settlement service provider to do that real time quality control," he said. "Now that also could mean that the title and settlement provider may have to do integrations with a number of different companies who provide those integration services."

Haskins said integration will be key to a growth in electronic transactions.

"With the increase in the number of lenders using eNotes, the next big step will be better integrations between loan origination systems and closing software," he said. "The biggest driver for title agents is the ability to have a consistent workflow. The more that electronic transactions become less of a 'one-off' and more of a repeatable process, the faster the growth in this sector."

"With the increase in the number of lenders using eNotes, the next big step will be better integrations between loan origination systems and closing software."

— Craig Haskins,
Chief operating officer,
Knight Barry Title Group

Monica Gilroy, principal and managing attorney, The Gilroy Firm, noted another setback to more widespread adoption is that recording entities have varying abilities to record electronic documents.

"If the clerk of court or recorder isn't electronic, it doesn't really motivate the lender to become 'e'," she said. "Every six months, we get closer and closer to that true a to z transaction."

George Holler, managing partner, Holler Law Firm LLC, agreed.

"County recorders continue to be a barrier in this area," he said. "There are a lot of them, with different budgeting levels, wondering if this is worth doing. I think there's been some impetus from COVID because it continues to linger on. Given the fact that it just continues to linger with more variants and doesn't seem to ever really go away, I think that might stimulate some of the county recorders to finally say, 'Lets get ourselves enabled.' The big issue with RON is the fully electronic signature. It's one thing if we have a wet signed mortgage, most places now [erecord those]. The question is 'Can I eRecord the electronically signed mortgage?' I still see that as a barrier, so I think the counties need to be incentivized a little bit to get going there."

Gilroy said the SECURE Act would go a long way to provide uniform remote notary requirements across states.

As Congress considers the SECURE Act, and more states adopt remote online notarization legislation, Cabrita pointed to several ways to prepare for adoption. The first step is to identify the vendors available to you, understanding their offerings and looking into their capabilities.

Another important step is asking how data is protected and stored. Is the data encrypted both at rest and in transit? How are users authenticated?

"How long is the data stored?" Cabrita added.

"Are they going to be storing it for years? Are they going to be storing it for six months? Do you have to migrate that data out of your environment? For New York attorneys, the standard is to maintain records for at least seven years. If your records are all digital, you will need to consider how you will store them for the minimum required time. Storing videos and tamperproof digital files will require a large amount of digital storage, all of which should be stored securely with the accepted standard for data at rest.

"Furthermore, it is vital to keep up to data with all the laws and regulations surrounding remote online notarization because they are going to be continuously changing," he said. "It's a new technology, a new system in place that is going to be evolving each month that new states pass it, or as they tweak their existing laws. It's going to be something we really need to keep on top of."

Continued impact of the pandemic

Of course, the industry will have to deal with the continued impact of the pandemic, in both the processes and requirements placed on the industry and the work needing to be done.

Everett said she is noticing regulators are pulling back on any dispensation or accommodations they might have considered toward the beginning of the pandemic.

"The other thing I think we will see at some point in time is that all the regulators and all the lenders are going to wake up and go, 'Wait a minute, we have all these people working at home. Are all these companies being compliant?'" she said.

"I've been through some lender audits where they came onsite and checked cameras, made sure nothing was on the floor, you couldn't do this, you couldn't do that; then, everyone went home. What is the new world of auditing going to look like?

"In my opinion, we've got a real opportunity in title to be the ones to design the standard for work at home," Everett said. "How do we protect everybody concerned; by deciding on a set of policies and procedures that say, 'Ok, you are working at home but here's the 20 things you have to do when you are working at home or we are all at risk.'"

She said this is something that will be addressed at some point in the near future.

Gilroy pointed out that foreclosures are going to increase in 2022.

"Foreclosures are going to have to break open starting in the beginning of 2022," she said.

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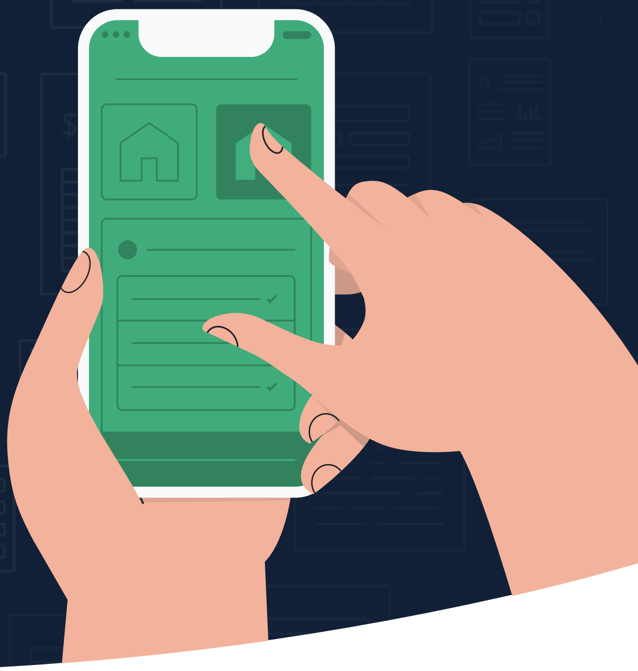

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"We've seen them just lately starting to come back. You wonder in the states that still have harsh eviction regulations, the western states like Washington and Oregon, and then some municipalities, like Boston, are there going to be any attempts to forestall foreclosure efforts."

She wondered if state attorneys general will scrutinize foreclosure efforts as an effort to protect consumers.

New year brings new RESPA issues

By Tracey Read — Editor, *RESPA News*

RESPA NEWS

The Consumer Financial Protection Bureau (CFPB) has a new director who is known for aggressively protecting consumers, but industry experts say RESPA Section 8 enforcement will likely continue to be a low priority for the agency over the next 12 months.

"I don't have any inside knowledge of CFPB priorities, but RESPA Section 8 doesn't fit well with CFPB Director **(Rohit) Chopra**'s priorities as far as I can tell," Katten & Temple, LLC Of Counsel **Brian Levy** told *RESPA News*. "I can offer three reasons for this insight: (1) it is often very difficult to identify any consumer harm in Section 8 claims; (2) most of the easier to identify and prove violations involve smaller actors rather than larger industry participants (Chopra has publicly stated he wants to focus on larger bad actors); and (3) there are consumer remedies (private actions) available where CFPB enforcement is not needed to obtain redress."

However, Levy warned that other regulators, such as the Federal Deposit Insurance Corp. or state mortgage or title regulators, may take a greater interest in RESPA in their exams now that Section 8 compliance obligations were clarified by the CFPB's October 2020 RESPA frequently asked questions (FAQs). Levy added, "Class action attorneys also know how to enforce RESPA, so it would be a grave mistake to only consider the CFPB's focus."

RESPA Section 8 generally prohibits, among other things, giving or receiving a "thing of value" pursuant to an agreement or understanding in exchange for the referral of settlement service business involving federally related mortgage loans. RESPA defines a "thing of value" to include, among other things, money, services, discounts, commissions and even the opportunity to participate in a money-making program. RESPA Section 8(c)(2), however, provides an exception to Section 8's prohibitions against kickbacks and unearned fees — under 8(c)(2), nothing in Section 8 may be construed as prohibiting payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed. This is the exception that many industry participants rely upon in making payments to third parties for marketing or advertising services actually performed.

The FAQs provided greater clarity on topics under RESPA, including examples of when a marketing services agreement (MSA) is or is not legal.

"Whether a particular MSA violates RESPA Section 8 will depend on specific facts and circumstances, including how the MSA is structured and implemented," the CFPB said in the FAQs.

Sterbcow Law Group Partner **Marx Sterbcow** said he knows of only one public active Section 8 case with the CFPB — a case involving the Quicken Loans family of companies and their possible required use of affiliated companies surrounding its real estate brokerage referral program.

"Outside that, I've been told that there are no other active RESPA Section 8 or 9 enforcement actions right now," Sterbcow said.

New cases that come up in 2022 are likely to come from the lending side, he added.

"And those will likely emerge from a CFPB lender HMDA audit," Sterbcow said. "And if there is another enforcement action added in the immediate future, this is where the investigation would originate. Currently though, as of December, there's nothing else going on in the CFPB enforcement books involving RESPA."

Meanwhile, the bureau is likely to continue to focus on RESPA servicing issues.

In October, Chopra told the Senate Banking Committee the CFPB is carefully monitoring conditions in the mortgage market and is taking steps to minimize avoidable foreclosures now that many borrower forbearance programs have expired.

"In many parts of the country and in many individual neighborhoods, conditions remain fragile," Chopra said in his testimony. "Many families continue to struggle to afford their mortgage and rent payments. Many small businesses are facing severe challenges to make ends meet. And, many communities have not felt much of a recovery, especially communities of color and neighborhoods that have been historically disadvantaged."

RESPRO President and Executive Director **Ken Trepeta** said servicing-related court cases, which require plaintiffs to prove actual damages, also are likely to increase.

Trepeta said things could become complicated if the bureau pursues cases that allow borrowers to argue they were unjustly foreclosed upon or otherwise harmed because they didn't receive a required notice or some other document, even though that notice was immaterial to the fact the borrower didn't pay their mortgage.

"It's one thing to argue that you didn't get a notice that you were overdue or were eligible for forbearance," he said. "That's a much different situation than where one says, 'I didn't get a lead paint notice or something when I bought this house, so therefore, you know, I don't have to pay my mortgage.' Not getting an overdue notice is directly related to the mortgage and mortgage payment. Other notices or disclosures are not.

"I think we'll see settlements because of that. Maybe the bureau gets a large lender to pay $20 million that goes in a restitution fund or goes into some other fund, and then they just dismiss the case. They just settle to make it go away but also establish the precedent that technical rules need to be followed without exception whether harm was directly caused or not.

"It will make some firms look bad. That's what robo-signing did more than a decade ago. The robo-signing thing were essentially technical violations. But in like 99 out of 100 cases (or more) the foreclosures were justified anyway."

Trepeta also thinks it will be interesting to see what happens to RESPA cases under standards that require an actual concrete harm under recent Supreme Court precedents such as *Spokeo* and *Transunion v. Ramirez*.

"For example, a borrower could claim, 'You made me use your affiliate, and you didn't have a right to do that under RESPA, and so I'm suing you for the $2,000 charge,' " Trepeta said. "But if one had a great experience with the affiliate company, there was nothing wrong with what they did, the rate they charged was set by the state or the same rate that everyone else charged, were you really harmed? Does one have standing? It does not seem so."

Sterbcow predicts the bureau will be closely watching for other violations along the lines of protected classes.

"If there's something involving discrimination in any facet, that's where they're going to look at," he said. "That seems to be their bigger focus right now within the bureau. And that doesn't just involve lending. This is where the title industry in particular needs to be up to speed.

"That can involve pricing anomalies in certain states. Let's say you are issuing insurance policies for company 'Underwriter A' as an agent, and that underwriter is a lot more expensive in that state. So, you're using that underwriter for lower priced-homes, vs. 'Underwriter B,' who is cheaper, but those prices are higher.

"So, you're charging him because maybe it's a more competitive situation where you're trying to find the cheapest alternative to get the deal versus your competitors. I think you may see something along those lines coming down the pipe. And so how does that impact the agents? Well, they may look at that from a lender who they're auditing. And through the auditing process, they may be looking at the title of their vendors, who would be a settlement service agent or attorney, to see what they're charging, what their fees are, and are those fees that they now have in their possession. Are those problematic fees that may hold that the lender is liable for those acts?"

A changing world necessitates appraisal adaptation

By Mike Holzheimer — Editor, *Valuation Review*

Although the pandemic picture may be more a bit clearer and better defined as businesses march into 2022, there are still questions that need to be answered in order to maintain high levels of confidence within the appraisal industry.

Appraisers have never been busier. Such consistent activity may be attributed to the introduction of new technology allowing appraisers to do more work and keep their doors open. No matter what the reason, the outlook for appraisers is promising.

Virtual meetings, albeit still in place for many, are quickly fading into the sunset with workers returning to the familiar surroundings of their business offices. But be it the desk from an office building or the kitchen table in someone's home, just as in 2021, appraisers remain productive, resilient, and most importantly, relevant.

The same question, though, continues to be asked, How do appraisers feel about their chosen career paths? The advancements in technology have certainly helped appraiser confidence. Additionally, the innovative and creative ideas/techniques continue to flow as appraisers continue to find a way to get things done.

Some of the leading experts in valuation shared their thoughts regarding what the appraisal profession can expect in 2022, and what needs to be addressed for continued productivity.

The Appraisal Foundation (TAF) President **David Bunton** indicated that much like 2020, 2021 was another busy year for the appraisal profession.

"Diversity, equity and inclusion initiatives have been at the forefront for many in the profession, and The Appraisal Foundation has been continuing its work to make the appraisal profession more reflective of the United States and to uphold the public trust in our profession for all Americans," Bunton said. "From bringing in an outside reviewer to review our board selection process to serving as a resource for Biden administration officials on the PAVE task force, we are tackling this issue head on and look forward to engaging in this important work in 2022 and beyond."

Tim Andersen, "The Appraiser's Advocate," noted that during 2020-2021 it became clear that (for the most part, anyway) appraisers did not really need to place boots in the living room to appraise a property credibly. This fact, Andersen pointed out, has angered and frightened some appraisers since it raises the specter of the GSEs removing appraisers from the mortgage lending continuum. However, as long as the GSEs sell their paper to the secondary mortgage market, the investors from that market will continue to demand the reps and warrants a real estate appraisal provides. So, the nightmare scenario that appraisers are to become relics of a bygone age are premature, he concluded.

"To keep the industry thriving will require that the demand that a real estate appraisal be merely 'credible' metamorphose into the realization, understanding, and practice that a real estate appraisal must really be accurate, reliable, and reproducible," Andersen said. "These three attributes are what the GSEs have started to demand. In addition, to thrive, the residential real estate appraisal industry will change its appraisal reports into persuasive communication vehicles essential to the client. Currently, too many appraisal reports are merely repositories of disassociated facts, some of which bear little relevance to answering the client's appraisal questions. This does not benefit the client; thus, the client rightly wonders why it is paying for something of little benefit."

Andersen also suggested that thriving appraisers already realize the GSE client, via its proprietary algorithms, knows the subject property's value (within a manageable margin of error) well before the appraisal report arrives. Rather, these thriving appraisers know their job is to discover, and then assess the risk factors, there are with making a mortgage loan on any particular property, in any particular neighborhood, at any particular time, he said.

> "The profession appears to have adapted well to the pandemic and associated changes forced on everyone."
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> — Pledger (Jody) Bishop, III, 2022 President, Appraisal Institute

Thriving appraisers, who choose to continue to work in the GSE mortgage lending space, will demonstrate to other appraisers that delegating the more mechanical of the appraisal processes to trainees, employees, and/or contractors, will free the appraisers themselves up to complete more assignments, or enjoy more leisure time (or both).

"The profession appears to have adapted well to the pandemic and associated changes forced on everyone," Appraisal Institute (AI) 2022 President **Pledger (Jody) Bishop, III** said. "Some of the change has opened new ways of thinking and operating, which has made appraisers more efficient, so some good has come from it."

The Practical Application of Real Estate Appraisal (PAREA) model also will play a factor in the year 2022.

"PAREA as a potential vehicle to train appraisers is still a strong and vibrant idea, but one that still has not come to fruition," Andersen said.

"That some states have indicated a reticence to approve PAREA, either in whole or in part, continues to serve as a speedbump (if not an outright detour) to its eventual implementation. So, the training of new appraisers will remain catch-as-catch-can for the immediate future (despite the best altruistic efforts of some appraisal associations and the people in them). Some states have chosen not to embrace PAREA, thus new appraisers will have the training opportunities limited to those they have now. As a result, the industry continues to age, and at least one major appraisal organization continues to lose members, with no injection of youth in sight."

Bishop noted that The Appraisal Foundation's Board of Trustees awarded the Pathway to Success grant to the Appraisal Institute for the development of a PAREA program, which became effective Jan. 1, 2021. The competitive grant application was reviewed, scored, and recommended for approval by a team representing foundation trustees, sponsoring organizations and the Appraiser Qualifications Board.

"The Appraisal Institute will receive the full grant amount of $500,000 to build its PAREA program in collaboration with its partners, provided that program development continues to hit predetermined milestones," Bishop said. "The AI Board of Directors approved the development of PAREA in September, committing more than $2 million toward the development of a PAREA program. The Pathway to Success conditional grant is designed to open up the appraisal profession to a new generation of appraisers. The grant requires that the PAREA program be brought to market within two calendar years and is conditional on the completion of the project. The grant also stipulates that participant priority be given to veterans, minorities and those in designated rural areas."

"PAREA is an alternative pathway for aspiring appraisers to gain their required experience hours to become a certified appraiser," Bishop added.

"We have also been pleased by the enthusiasm of the marketplace for PAREA," Bunton said. "There are five different PAREA modules that are currently under development, and we hope to see the first one hit the marketplace early next year. This is a game changer for aspiring appraisers and will help our profession continue to grow. As always, the work of the foundation would not be possible without the continued engagement of our stakeholders. I want to thank every one of the appraisers, regulators, and consumers who have participated in our meetings or provided their feedback over the past year. It is invaluable."

But what about the fact that the industry still needs more to enter the profession. What occurred in 2021 that might be deemed as positives with regards to increasing the number of appraisers?

"The FHFA's recent announcement on permanently accepting desktop appraisals was a huge win, creating the ability for more appraisers to diversify their assignments and potentially increase their annual income," Accurate Group's Chief Appraiser **Tony Pistilli** said. "The volume of assignments was a double-edged sword of sorts for appraisers. Certainly, we all enjoy being busy, but it was really busy. Because of this, turn-times were longer which brings attention to appraisers' ability to complete assignments on time. But this also presents an opportunity for appraisers to implement new technology to be more efficient and timelier in completing assignments."

Andersen pointed out that rather than taking on a trainee-appraiser, these forward-thinking senior appraisers take on researchers.

"In this way, the senior appraisers amortize the costs of training across the entire company, rather than solely across the likely already-beleaguered senior appraiser," he said.

"Then, after learning how to research, and interpret that research into information the client can use, the researcher becomes a trainee-appraiser under the tutelage of the senior appraiser. This is a model appraiser can adopt quickly and relatively inexpensively."

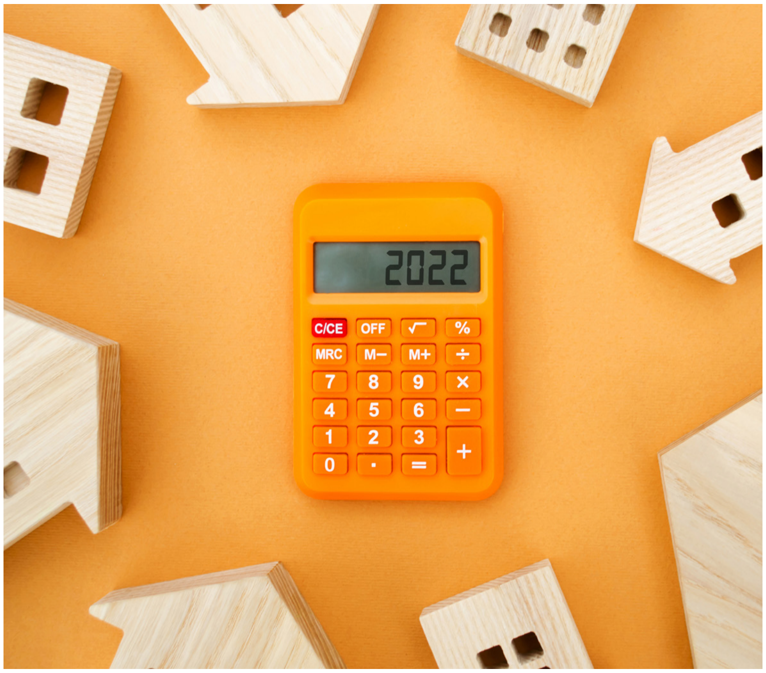
As to technology, and where that particular state of the industry lies, Andersen outlined some specifics.

"So far, real estate appraisal has embraced technology with the same ardor as with which a teenage brother would kiss a little sister," he quipped.

"True, there are more appraisers taking advantage of changes in technology. But these changes in technology are peripheral to real estate appraisal. Advances in technology notwithstanding, the science and art of real estate appraisal are still stuck in the 1930s. To cite **George Dell**, residential real estate appraisal is still 'three comps and a cloud of dust.'

"Part of the problem is that real estate appraisal is still too fractured, fractious, and bumptious to coalesce into a force for its own advocacy," Andersen added.

"If we were so to coalesce then, for example, we would have access to all the same 'big data' as to the national AMCs and GSEs. This would make appraisal far more of a



science, thus more reliable, accurate, and reproducible, all three of which the GSEs currently demand. As to significant changes in 2022, we may see some in the appraiser recruitment and training models. These, however, will be at the behest and choice of individual appraisers, not the industry itself. The GSEs will continue to change their risk-management requirements as is necessary to maintain their position as the source of mortgage funds for many borrowers."

According to Pistilli, hybrid and desktop appraisals will finally lead to appraisers working from "the cloud."

"We will be able to take advantage of all the technology and features that were previously unavailable on our desktops and this will create huge efficiencies and allow appraisers to earn more money per hour," Pistilli said.

"Remote inspection technology was primarily utilized as a tool to keep lending on-track during the pandemic, but I think in 2022 more lenders will look to implement complete digital mortgage solutions and this type of inspection will become an industry mainstay, which is ideal for lenders who want to drive greater efficiency, improve loan turn-times and ultimately better serve the consumer."

Pandemic impact, regulatory changes among industry's 2022 challenges

By Elizabeth C. Childers, Esq. — Editor, *Dodd Frank Update*

It now may be safe to call 2020, 2021, and the beginning of 2022 officially the "pandemic era." Although improvement has been seen on the COVID-19 front over the last year with statistics like the unemployment rate and delinquent mortgages returning to near pre-pandemic numbers, the mortgage and banking industries will be dealing with the outcomes for some time.

As 2022 begins, it is natural for the industry to turn to experts to get a feel for what is coming on the horizon. *Dodd Frank Update* spoke to **Anthony Alexis**, Goodwin Procter LLP partner, Complex Business Litigation and Dispute Resolution and Financial Industry Litigation, and **Tim Burniston**, Wolters Kluwer Compliance Solutions senior advisor for regulatory strategy, to provide their perspectives on current industry concerns and to give input on what banks, lenders, and originators should be aware of as the year progresses.

Alexis told *Dodd Frank Update* the industry's biggest accomplishment in 2021 was the quick transformation out of pandemic programs and getting back to business as usual, as well as adjusting to remote business practices. He said he was surprised by the industry's speedy adjustment to compliance programs to demonstrate adherence to laws, and how quickly consumers received remediation for errors.

Burniston offered his analysis on Wolters Kluwer's annual Indicator survey, which gauges banker sentiment on several issues related to regulatory and risk management. Respondents were primarily bank management, executives, and compliance roles, with strong representation from those in lending functions.

Their top concern from an enterprise risk standpoint was the threat of ransomware attacks, with 63 percent giving it "significant consideration" and an additional 22 percent marking it for "some consideration" in their planning, Wolters Kluwer stated. Other concerns were the pandemic's ongoing impact (49 percent); loan default risk (46 percent); inflation concerns (42 percent); business resilience and adaptability (41 percent); recession fears (34 percent); and climate-related financial risks (21 percent).

Cybersecurity also was the top risk management priority at 70 percent, followed by compliance risk and credit risk, both at 43 percent.

"Credit risk continued to rank very high, but we saw quite a drop in the level of concern," Burniston said. "Last year (the 2020 survey) we saw that 61 percent of our respondents indicated they were very concerned about credit risk, but it dropped down to 43 percent in the 2021 survey. I think that reflects the fact the industry is feeling a little bit better about their credit profile now that the pandemic is not raging at the same rate it was when we did the last survey a year ago. It is noteworthy, however, that the Omicron variant had not been identified when we did the 2021 survey."

Burniston said he was surprised compliance risk did not rank higher as a management priority because of the change in administration, new agency leaders, and a lot more attention being paid to compliance and consumer protection issues. He also said he expected third-party risk to register a bit higher because of new and "reinvigorated"

Consumer Financial Protection Bureau (CFPB) leadership and significant attention to third-party risk management coming from the prudential regulators

Many in the industry have been concerned about a return to a more Cordray era-like approach with **Rohit Chopra**'s confirmation as director of the CFPB, which has been said to be akin to regulation-by-enforcement. However, Alexis predicted the bureau was more likely to use 1022 orders instead of enforcement-only mechanisms to address market topics.

Orders issued pursuant to §1022 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires participants in the payments market to turn over information to help the CFPB monitor for risks to consumers and to publish aggregated findings that are in the public interest. The CFPB recently has issued such orders to tech companies like Amazon, Apply, Facebook, Google, and Paypal relating to their payment technologies. The bureau also issued one to companies who offer buy now, pay later products, which have become increasingly more popular during the pandemic and 2021 holiday season.

Alexis also forecasted the CFPB may be more likely to hold individuals responsible in routine CFPB investigations, as opposed to only the entities themselves. The industry saw an example of this in the bureau's recent settlement against Access Funding, which allegedly was steering consumers considering signing away future structured settlement payments for a lump sum payment to receive "independent advice" from an attorney who was paid directly by the company and indicated to consumers the transactions required very little scrutiny. Two executives and the attorney were listed as defendants who unlawfully aided illegal conduct and engaged in abusive acts.

The Wolters Kluwer survey asked respondents their opinion on the prospect for reduced regulatory burden. Seventy-two percent responded the odds of regulatory relief was either "somewhat unlikely" or "very unlikely." This was a year-over-year increase of 16 percentage points, showing bank executives are more pessimistic about regulatory burden reduction than years prior.

"The ability to keep up with change, and manage it across the enterprise, continues to be a key consideration because change is not necessarily slowing down."

— Tim Burniston,
Senior advisor for regulatory strategy, Wolters Kluwer Compliance Solutions

However, the survey also showed banks have become more confident in their ability to keep up with regulatory changes and compliance requirements.

"The ability to keep up with change, and manage it across the enterprise, continues to be a key consideration because change is not necessarily slowing down," Burniston said. "Something financial institutions want to make sure they have in place are adequate programs and systems to manage regulatory change.

"Is the industry feeling more confident in its ability to do that because they've ramped up or built up their systems for risk management? "Probably so," he continued. "I think that's a good thing. But that doesn't necessarily take away from the fact that keeping up with change isn't a major challenge."

In the coming year, Alexis recommended the industry keeps an eye on rules, regulations, and bills related to the small-business rule and consumer data. Respondents to the Wolters Kluwer Indicator survey also listed the Dodd-Frank §1071 small business reporting rule as one of their most pressing regulatory challenges in the coming year.

Those surveyed also mentioned Bank Secrecy Act/Anti-Money Laundering requirements; forthcoming Beneficial Ownership requirements; fair lending laws and regulations; unfair, deceptive, or abusive acts of practices standards; Community Reinvestment Act rule changes; current expected credit losses (CECL) standards; and state-issued regulatory requirements were on their radar.

"What surprised us there was we didn't see fair lending rank higher," Burniston said. "It was up a little bit from 2020, but not quite as much as I had expected."

Burniston mentioned that many of the regulators are devoting significant amounts of examination time and resources to fair lending issues such as redlining, pricing, use of artificial intelligence, and credit determinations. Additionally, the Department of Justice has issued a couple of significant fair lending settlements in the last few months.

"My understanding is we may see more soon," he continued. "Fair lending is up there, but as I mentioned, not quite as high as I expected to be going forward into 2022. We're likely to see a jump there in next year's survey."

With the regulatory environment heating up, Burniston said a lot of institutions will be looking to build up their compliance staff again, and that may present a challenge. Good compliance people are not easy to find, and the demand for compliance resources is high.

When dealing with the aftermath of the COVID-19 pandemic, Alexis said lenders and originators will likely face the challenge of "calibrating potential adverse consequences to consumers with incredibly challenging obligations to the businesses under various rules related to forbearance, etc."

"Based on what we've been seeing from the regulators and law enforcement community, we should all expect a very, very active 2022 in key areas of risk and compliance," Burniston said.

To keep up with such regulations, Burniston recommended a regulatory change management program that includes an up-to-date living "library" of regulatory content that is able to map the changes as they are put in place. He also suggested a strong compliance and operational risk management system, including a robust third-party relationship management component.

"You can never underestimate the importance of having fully updated policies and procedures across the organization," he said. "It is the first thing regulators are looking for to see whether the organization has been able to fully operationalize regulatory requirements."