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# The changing face of the title insurance industry: Business models and critical partnerships - Part 1

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Despite tough economic times, companies that provide real estate transaction services are finding new business opportunities to assist the embattled real estate, finance and banking industries. In particular, title companies experiencing declining revenues tied to challenging real estate markets are using their expertise to help borrowers and lenders with the restructuring of mortgages.

According to Bloomberg, beginning in 2007 through the third quarter of 2008, bank losses exceeded $500 billion, which leaves a great deal of delinquency and loss mitigation to facilitate. Data from Loanworkout.org and the Foreclosure Working Group suggests that servicers' loss mitigation departments are severely strained in managing the sheer number of delinquent loans. The group further said servicers, investors and government officials should work together to develop a more systematic loan workout process to replace the intensive, individual, "hands-on" loss mitigation approach.

Currently, loan workouts are on the rise in both commercial and residential lending markets. Lenders are looking to the title insurance industry for assistance with critical title aspects of mortgage modifications and loan workouts. While most real estate secured loans include a lender's title policy, the primary issue associated with loan modifications is that the lender's title policy specifically excludes matters that occur subsequent to the date of the policy. Generally, an endorsement or update to the existing policy or, in some states, a new policy should be obtained when a mortgage is modified.

Loan modifications:

The devil's in the details

Loan modifications and workouts require keen attention to detail. Title insurance companies work closely with attorneys who are representing the borrowers and lenders involved in loan workouts, providing updated information from the land records concerning any new liens, encumbrances or changes in the title that may have occurred since the recording of the mortgage. Title professionals also make sure that the modification agreement and any lien subordinations and/or releases are properly recorded in the land records.

When all is completed, the title insurance company issues a new policy (or, in many states, an endorsement to the policy which insured the original mortgage) insuring the lender against loss or damage that it may sustain by reason of:

1) The invalidity or unenforceability of the lien of the insured mortgage upon the title at the date of the new policy or endorsement as a result of the recording of the mortgage modification; and

2) The lack of priority of the lien of the insured mortgage, at the date of the new policy or endorsement, over defects in or liens or encumbrances on the title except for those shown in the original policy or any prior endorsements and those which may have arisen between the date of the

recording of the original mortgage and the date of the recording of the mortgage modification which have not been released or subordinated to the lien of the mortgage as modified.

Since it takes time to conduct an updated title search and to obtain releases or subordinations from other parties who may have mortgages or other liens that were recorded after the original mortgage was recorded, it is suggested that lenders or their attorneys who are involved in loan workouts and mortgage modifications contact their title insurance company as soon as the decision is made to restructure the loan.

Part two will appear in the March 13th edition of the New England Real Estate Journal in the Financial Digest section.

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