Walking the Tightrope: Protecting Property Ownership in the Age of Technology

Description

Article by Michael Holden

A new federal pilot program that experiments with an automated title review process to assess title risk remains under scrutiny as the program gains steam with two title insurance underwriters now approved as vendors for the duration of the pilot.

The Federal Housing Finance Agency (FHFA) Title Acceptance Pilot, launched in 2024, is a small-scale, limited duration pilot that allows Fannie Mae to remove existing requirements that a lenderâ??s title insurance policy or Attorney Opinion Letter (AOL) be obtained for certain transactions that pass muster.

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In July, both Westcor and Fidelity National Financial (FNF) confirmed they are collaborating with the FHFA and the government-sponsored enterprise to function as vendors using proprietary technology to facilitate the automated title review process.

Although the approved loans would no longer be required to have an accompanying title insurance policy, a lender selling the loans to the GSEs would pay a token fee in place of title insurance.

Westcor said in its press release that it had partnered with policy issuing agent Mortgage Connect LLP in the creation of the solution, noting that â??the initiative is distinct in the marketplace as it includes a title insurance-backed product, one that retains the core benefits and legal assurances that are the hallmark of title insurance.â?•

But questions remain concerning the efficacy of such a process.

Rep. Warren Davidson (R-OH) penned a letter to FHFA Director Sandra Thompson in December 2024 asking the agency to halt the proposed pilot program. He cited numerous concerns, including what he observed as a basic misunderstanding of the role of title agents and title insurance in protecting homeownership rights.

Davidson wrote, â??Title insurance also provides important protection against fraud and forgery, which are growing risks in the settlement of real estate transactions nationwide. The decision to waive the requirement for full title examinations and title insurance coverage â?? making Fannie Mae responsible for all unexpected title effects â?? exposes lenders, consumers and now U.S. taxpayers to increased risk and financial vulnerability.â?•

As any title agent can tell you, the protections afforded in the process of researching and verifying property ownership as well as conducting a real estate closing goes far beyond the regurgitation of available data.

The discipline of the title insurance industry is a human one as well as technological, with human eyes perceiving forged documents, human perceptions raising suspicions over a sellerâ??s legitimacy, human memories recalling a recent transaction that makes the current one suspect, or human intellect detecting fraudulent communications.

With many complications at play in a transaction, the question that has been entirely missed by the FHFA is this: If title goes unscrutinized by title agents, who is going to be the gatekeeper for the undetectable issue that might arise? Who is going to correct the record before the house is sold again so that the next buyer is not saddled with unknowable risks or that the homeowner is not stymied in selling the home because the record is now in a muddle?

The quest for lowering closing costs for consumers is a noble one, and in the current technological environment, appears to be a legitimate cause to pursue. But not at the expense of understanding the full range and depth of what title companies do to protect homeownership rights, not just for the transaction in front of them, but for the long-term protection and validation of the public record.

This has been the genius of the system from the beginning; to create a reliable land record system that will exist in perpetuity. That takes exemplary effort, which the title insurance industry has been steadfast in executing for more than a century.

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To that end, the pursuit of title clearance through technology to lower the cost of homeownership for consumers has to be balanced with a realistic look at the long-range effect on the quality of the data that the technology relies upon and the financial risks posed by an uninsured title.

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Date Created
2025/09/24
Author
vltaexaminer