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The case for a code of ethics for the title insurance industry

"An old Cherokee grandfather is talking to his grandson around a campfire. He tells his grandson that there is a fight going on inside every human being. It's a fight between a good wolf and a bad wolf. The bad wolf is a liar, hateful, a cheat and deceitful. The good wolf is caring, loving and concerned for the people. The little boy asked his grandfather, 'Which wolf will win?' The grandfather looked at his grandson and said, 'Whichever one you feed.'"

Frank Bucaro, consultant and former ethics professor, shared this anecdote during a presentation he gave in March during the 2007 TAVMA Exposition in Orlando, Fla.

The story is a simple allegory that can be applied to the ethics of an individual, a company, an industry, or for that matter, an entire nation of people.

The concept of ethics is old as the Greek civilization that coined the word. A code of ethics, by definition, is less about invoking legalistic principles and more about setting high standards and guidelines by which to benchmark decisions in the course of commerce.

At a recent hearing on Capitol Hill, a Congressman demanded of NAMB President **Harry Dinham** how mortgage brokers could hold themselves out as trusted advisors, but refuse to own up to a fiduciary duty to their customers.

It was a question of ethics. On one hand there is an ethical responsibility of a broker to get his customer the best deal. But a broker also has responsibility to make money for the lender. The scenario highlights an ethical dilemma inherent in the system that needs to be resolved.

The settlement services industry is currently facing similar ethical dilemmas that have become so huge in the minds of the regulators that HUD is reportedly considering rewriting the RESPA rules to achieve what it thinks is a more ethical environment for the consumer, and the U.S. Government Accountability Office is conducting a year-long study of business in the title insurance industry.

The question that emerges from all of this recent examination of conscience is: Should the title insurance industry have a code of ethics, and if so, what should its fundamental purpose be, and what should it contain?

The importance of dialogue

The American Land Title Association deep-sixed its code of ethics some years ago because it was perceived to have no teeth and so, no value. There are plenty of business ethicists who would agree that codes have little value.

But many others argue that the value in a code of ethics is in the development of the code itself and in the ongoing dialogue that surrounds the issues that emerge in relation to it.

Jonathan E. Smith, chair of the Department of Management, Marketing and Logistics at John Carroll University in Cleveland, said having a code of ethics clarifies a company's or industry's playing field.

"It's not clear that everyone would agree what ethical behavior is, and a code of conduct helps with that area of difference," Smith told *The Title Report*.

"For example, some people might think it important to hedge telling a customer when a product will be

shipped,” Smith said. “They promise what they can’t deliver and justify that the customer does not need it that soon. Another unethical practice in business is backdating stock options to get a better price later on.”

How do such ethical lapses enter the marketplace? Often such practices become de rigeur because there are no beliefs, principles or rules by which to benchmark those decisions. The best codes, according to some ethicists, are no less than expressions of dedication to integrity, civility, decency and the pursuit of excellence, all of which are necessary for the survival of civilized society. As such, codes of ethics are among the most powerful tools for instilling those requisites of civilized society. In his book “Military Ethics: A Code of Ethics for Officers,” **Richard DeGeorge** notes, “The very exercise of developing a code is in itself worthwhile; it forces a large number of people ... to think through in a fresh way their mission and the important obligations they as a group and as individuals have with respect to society as a whole.”

DeGeorge takes us right back to the importance of the ethical dialogue itself. As you engage the process of dialogue within a company or industry to create a code, you effectively legitimize and strength the message.

The guiding light

Jay Duncan, president of St. Louis-based Bi-State Title Search, believes strongly in the importance of a code of ethics. He co-authored a code of ethics in June 2004 for the National Association of Land Title Examiners and Abstractors (NALTEA) and was surprised to discover that ALTA no longer had one.

“You could be legally right, but ethically wrong,” Duncan told *The Title Report*. “Without a code of ethics to guide you, you could be going down the wrong path.”

Baltimore lawyer **Mark Lynch**, senior vice president and Maryland State Agency Counsel at First American Title Insurance Co., recently shared the story of how he became a “person of interest” to the FBI and was questioned about his alleged association with a known drug dealer. Lynch could not even remember who they were talking about when he was questioned by the FBI, and later realized it was someone for whom he had conducted a closing a year earlier.

That innocent brush with the law has made Lynch a strong believer in a baseline code of ethics. He devised an “ethics checklist” for industry professionals.

“First, ask yourself, if the details of a closing were published in the local newspaper, would it look bad?” Lynch asked his audience. “Secondly, ask if your family and friends would agree with a particular business decision.

“If you are too embarrassed or ashamed to share that decision with your loved ones, that’s a red flag,” he said. “And last, ask yourself, is it legal?”

Warning signs to watch for include telling yourself that all of your competitors take short cuts — and if you don’t, you will lose business; saying you will only make an exception in this one case — and that no underwriter will ever notice, Lynch said.

“The courts are filled with people who said, ‘They made me do it,’ or ‘I’ll do this just once,’” Lynch said. “After you’ve crossed that line, it’s hard to go back. Your ethical reputation takes a lifetime to build — but just two minutes to destroy.”

While some industry professionals downplay the necessity of drawing up a formal ethics code, Lynch believes title agents owe it to their customers and the industry to abide by a specific written code. This includes following the ethical requirements of complying with privacy issues and security of data, he said.

A future without ethics

Contemplating the future without a code of ethics in any industry in the United States is problematic given the general demise of ethics at every level of society.

It is even more critical for the settlement services industry — an industry filled with professionals who were milk-fed ethics 30 or 40 years ago but who will be retiring in droves in the coming decades. They are going to be replaced by a new generation of workers who have been weaned on an ethical corporate structure weakened by the scandals of the past decade.

Smith pointed out that it is an unfortunate truth that students today come to class ill-equipped with a sufficient vocabulary to analyze ethical problems such as who bears the cost or the burden; what is the fair thing to do and what is the basis for our judgments.

“More students, today, have less connection to the concept of faith and ethics than 20 years ago,” Smith declared.

Bucaro backed up this assertion noting that half of all students in MBA programs cheat on their tests. In a year they will be looking for jobs “and you are going to hire them,” Bucaro said. “If you cheat at little things, you will cheat at big things. How many weak links at your company can you afford? None.”

Jerald Greenberg, professor of Management and Resources at The Ohio State University’s Fisher College of Business, conducted a study which showed that nearly any worker may be willing to steal from an employer under some circumstances — unless the company makes clear that theft is unethical. Many employees ranked at a normal level of moral development were willing to steal, but only if their office didn’t have an employee ethics program, while workers ranked at a lower level of moral development stole from the company whether there was an ethics program or not, Greenberg reported. But if a company has no ethics program, even the most reliable and moral will be sometimes tempted to steal, the study found.

The title insurance industry has long prided itself on being the protector and defender of land ownership in the United States, an industry that truly believed it was creating a better life for the American people. But competing interests between underwriters and agents, questionable business models to lock down market share and the proliferation of kickbacks to “buy” business have all served to throw a critical light on an industry that once considered itself a knight in shining armor.

Can a code of ethics raise the bar high enough to get the knight back on his horse? Many in title insurance believe it is not only necessary, but critical to the long term health of an industry that has suffered in recent battles with the popular press and regulators, and an industry that faces, at best, an uncertain future in both realms.