THE TITLE REPORT

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Former title agent, ex-con clamors for code of ethics

While ALTA abolished its code seven years ago, there's a segment in the industry calling for an ethical cleansing

Does the industry need a new code of ethics?
With reports of fraud being committed by title company execs across the nation, some have questioned why the industry doesn't have a code of ethics. In this first story of our three-part series, we talk to a former title company president who was convicted in a property flipping scheme. In part two, you will hear from a real estate lawyer who became a person of interest when the FBI came calling. Our final story will examine some new models calling for sound and ethical business practices.

His name was Federal Inmate Number 34661-037; his address, Cube 19, Lewisburg Penitentiary, Pa., home for five months in 2004 following his conviction in a property flipping scheme.

Once known as a respected licensed title agent and successful owner of a Baltimore title insurance company, **Ed Rybczynski** personifies what can happen when you bend the rules and step onto a slippery slope.

Two years after leaving prison, the 45-year-old Baltimorean shares his "scared straight" story to industry professionals around the country and consults on fraud prevention and best practices. He also has a Web site and blog at www.title-opoly.squarespace.com aimed at educating title agents about ethical issues.

"I wanted to share my experiences with the title community to keep my people from going through the same things I did," Rybczynski told The Title Report. "Title agents have a fiduciary, legal obligation to the borrower … plus we have a lot of money to deal with."

Ask and tell
"Traditionally, title agents are the last line of defense – and have an obligation to detect and report fraud," he said. "The credibility factor is possibly the most powerful force at work in the title industry.

"But rather than have a static and cold written ethics code, what we need is a Web site which could be a virtual mentor, a living guide which presents case studies, indictments, class actions lawsuits, RESPA actions and a code of behavior," Rybczynski said.

He is critical of the American Land Title Association (ALTA) for its lack of an ethics code. "If ALTA was truly concerned about a set of behavioral guidelines for members, it would be visible, often cited, enforced and applicable to the real world," Rybczynski said. "It's perplexing that the trade association for such an important profession would miss something so important."

No code for ALTA
However, **James R. Maher**, ALTA executive vice president, believes strong regulation is the answer. He said ALTA doesn't currently have a code of ethics. The trade organization abolished the code because it was tied to a never-used grievance process considered ineffective and problematic, Maher said.

"That code had been written many years ago and did not reflect current market practices effectively," he said. "Given the fact that ours is a regulated industry, it was felt at the time that consumers and competitors, alike, would be better served by an empowered regulator governing market conduct — as opposed to a voluntary membership organization trying to ‘enforce’ a set of high-sounding principles.”

Current market conduct conditions may force ALTA to reconsider issuing a new set of ethics. Maher said reasonable enforcement remains a concern, but added ALTA won’t issue platitudes that have no teeth.

While ALTA did away with its code, the Mortgage Bankers Association retooled its code in March 2002. It includes 12 canons ranging from professionalism and integrity to fiduciary duties and disclosure. The National Association of Mortgage Brokers offers a brief code of ethics that help serve the interests of the private and public sector. The National Association of Realtors has updated its code yearly since 2000. The 2007 code is a lengthy list describing the role of a real estate agent. The National Association of Home Builders issues a code of ethics certificate with 11 pledges to follow.

Ethics code coalition

Diane Cipa, general manager of The Closing Specialists, based in Ligonier, Pa., is one who believes the title industry needs an ethics code and is attempting to launch an industry-wide coalition.

“First, the fact that ALTA no longer considers a code of ethics important, speaks volumes about the organization’s priorities and how its members view their role as a standard bearer for the industry,” Cipa told The Title Report. “A code sets standards which, backed up by a committee, might hear complaints and give meaning to membership.”

If ALTA doesn’t feel a code of ethics is the answer, a starting point could be establishing a set standard for security and a licensing process that includes a credit and criminal background check.

“Title professionals handle millions of dollars and are in the unique position to monitor and stop most instances of fraud in a real estate transaction — the most important step in cleaning up the industry,” Cipa said.

Regulators “have depended on title underwriters to screen employees and agents — and the underwriters have done a poor job of it,” Cipa said. The industry could look at screening procedures used by the securities industry and banking institutions — and screen out obvious high-risk persons.

“Once you get a reasonable selection process in place, people can be taught the difference between right and wrong,” she said. “In my office, we teach our staff to respond when a real estate agent, lender or consumer suggests unethical behavior.”

This includes training her employees to take control of a sticky situation before problems develop. “Our industry is filled with people who want to do the right thing, but are afraid,” Cipa said. “We can weed out the bad actors and teach everyone else.”

Just say no

Rybczynski believes ethical behavior and fraud prevention are really nothing more than the personal conviction to say “no.”

The beginning of Rybczynski’s downfall came when a Realtor “friend” roped him into notarizing falsified documents involving straw owners and rundown properties he never saw.

He never saw it coming when he became a real estate agent in 1985, and the owner of Liberty Title in 1988. For the next 12 years, he socialized with title agents, real estate agents, mortgage brokers, lenders and clients.

Soon he began looking the other way when real estate cohorts asked for favors in notarizing documents.

He said nothing of shady transactions including a practice of making one deal on paper for HUD, while sealing the real deal with a handshake.

Resisting temptation
“This type of transaction involving a ‘fake second’ became quite popular in Baltimore,” Rybczynski said. “Certain upcoming areas … were viable targets for Realtors and lenders who were willing to inflate values to cover closing costs.

“Of course, the buyers and sellers were willing participants in the scheme, as well as the appraisers and title companies,” he said. “Liberty Title refused to close any number of these deals and could have made a lot of money doing so.

“I once was approached by a well-known Realtor about using a power of attorney for a seller who had died,” he said. “She couldn’t understand why I said no.”

Another real estate agent asked Rybczynski to tell a nervous buyer that the lender would not foreclose if she missed payments. He told her the truth, anyway.

“One loan officer stopped doing business with Liberty because we explained documents to borrowers,” he said. “I once stopped a loan broker from signing his uncle’s name to a mortgage … and stopped a closing when the Realtors discussed major repairs that were not completed. Appraisers would cooperate by submitting photographs from other properties.”

In these and other instances, Rybczynski “lost a source of business by making an ethical decision.”

Tide turns
Before the appearance of the Controlled Business Arrangement (CBA), he never worried about procuring future business.
“I was more inclined to say no when asked to do something questionable since I could freely market to any lender or real estate company, large or small,” Rybczynski said.

“I was devastated when I learned that Coldwell Banker had entered into a business arrangement with a large, local title company,” he said. “The new arrangement benefited those Realtors who directed business to this particular title company.

“Needless to say, my business suffered,” Rybczynski said. “The CBA presents a real dilemma to the title professional. Free trade and competition are eliminated and the consumer becomes the loser thanks to increased prices and reduced services to buyers.”

The title company operating under a CBA must cover its own profit requirements while charging additionally for the referral fees paid to the source of business, he said.

“The CBA is a fertile breeding ground for loan fraud and generally improper business practices,” Rybczynski said. “You can’t replace business and are less likely to say no when asked to do something wrong. You are forced to consider the reaction of your business partner when a closing is delayed due to a title problem or closing issue.”

From bad to worse
Toward the end of his title career, he didn’t know when his workday ended and family time began.

“I used to cringe when my home phone rang in the evening,” he said. “It meant that a Realtor was calling to gossip or complain. It’s possible that my greatest mistake as a businessperson was to form close friendships with Realtors and loan officers.”

He allowed one “friend” to take a closing package to his elderly mother for signatures after Rybczynski affixed his notary seal onto the document — a clear case of loan fraud.

Familiarity breeds contempt
The crooked real estate agent masked his greed with “friendship and concern,” for Rybczynski’s son, Adam, a child with special needs.

He also ignored red flags such as the Realtor’s gambling problem, his exotic vacations, new Cadillac’s and a lot of cash — a sure sign of a man living above his means.
“He actually was a notorious slum lord,” Rybczynski said “He came to know my routine and brought different women to my office with false ID’s for me to notarize … I felt helpless and out of control and dependant in a very negative way on Realtors and lenders.”

In January 2000, Rybczynski’s world began to unravel when a secret service agent called his office and asked about a file.

“In March, the FBI was accusing me of abusing my notary privileges in Maryland because I failed to maintain a notary log,” he said. “Being lax in my notary duties set the ground work for the criminal investigation.”

The dam collapsed on June 19, 2000 when the Baltimore Sun featured a story on the flipping scheme and Rybczynski’s office was raided. Eventually he appeared before a grand jury and was sentenced to five months in prison, five months house arrest and lost the right to acquire a professional license.

Sent up the river
On an overcast Monday morning on Jan. 5, 2004, he left for Lewisburg, a transitional prison for dangerous convicts. At Cube 19, he shared a 6-by-8 foot cell with “Scott,” a gang member and drug dealer who had spent half of his 32 years in prison.

“Lewisburg was no country club,” Rybczynski said. “It housed 360 inmates, with just 15 men for committing white collar, non-violent crime. First, I was assigned to the kitchen where I had to walk a precarious line between getting in trouble with my supervisor or with gang members for refusing to steal food for them — used as currency to buy other things.”

Fortunately, “Scott” stood at the head of the food line warning the inmates not to ask his “bunk mate” to steal food for him.

A light at the end of the tunnel came for Rybczynski when he was put in charge of the prison’s GED program, helping inmates get their high school diplomas and improve their reading and writing skills.

“Teaching was incredibly fulfilling and rewarding,” he said. “I threw myself at it with passion.”

Grounded
On June 3, 2004 Rybczynski returned home for five months house arrest. He then started his own abstracting company and was often asked to speak to real estate and consumer groups about the pitfalls of the business.

“When I do a presentation, title agents grab me later on and tell me how they became friendly with bigger sources of interest,” he said. “They also say that in some ways technology is a problem because it masks the ineptness of a well-intended agent.”

Rybczynski said technology has made it simple for fraudsters to falsify identity documents. He added a dramatic spike in default rates occasioned by rising interest rates have unearthed a generation of loans originated by internally falsified documentation and over-inflated appraisals.

Linda Izzo-Heinrich, a former real estate broker and title agent and owner of the Title Group, based in West Nyack, N.Y., has been an outspoken critic of the industry as well.

The title industry not only needs a code of ethics, but its agents should have formal training, she said.

“As of now, a warm body with no felony crimes can serve as a title agent in New York State,” Izzo-Heinrich told The Title Report. “I don’t see the point of simply licensing title agents. You can take a coat from Wal-Mart and sew a Sak’s Fifth Avenue label on it — but it’s still only a Wal-Mart coat with a fancy label. You’ve got to improve the total quality of the coat.”

The whole industry needs a healthy dose of ethics through upfront disclosure of all fees and costs, said Izzo-Heinrich, who is working with the state insurance commissioner and a select group of underwriters and agents to come up with a fair plan for all parties.

Rybczynski said the industry has its head in the sand, adding it has evolved from 25 years ago, starting out as being adjunct to law offices to being its own business to becoming an industry and monopoly.

“I don’t think the industry, itself, knows what it is,” Rybczynski said. “I predict that fraud in 2007 will escalate to startling heights. Legislators and industry leaders will continue to approach the problem with ‘stone hearts’ and ‘closed minds.’”