

Bracing for new rules



Photo by Brad Iverson-Long

TitleOne General Counsel Cameron McFaddan (left) and CEO Mark Tidd (right) have to comply with new federal rules for dealing with mortgage lenders.

Dodd-Frank links companies to bank reform

BY BRAD IVERSON-LONG
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Local title companies and banks are starting to prepare for new federal rules that will place their businesses under the same regulatory umbrella.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, which Congress approved four years ago to regulate the financial industry, contains a provision that will penalize lenders if their vendors break the law. Title companies will be held accountable for failing to keep close track of information pertaining to the mortgages they underwrite. The rules go into effect next year.

Title companies fell under the regulations thanks to a bulletin published in 2012 by the Consumer Financial Protection Bureau, a new agency created by Dodd-Frank. The bulletin initially seemed innocuous to title companies and other service providers for lenders, according to Ken Howell, a partner at law firm Hawley Troxell in Boise. But the lending and real estate industry soon became concerned by its breadth, Howell said.

The CFPB's bulletin says service providers shouldn't present unwanted risks to consumers. Steps that service providers need to take include maintaining their proper licensing, making sure escrow accounts are properly controlled and making sure that non-public infor-

mation, which for title companies could include the loan number or social security number of someone receiving a home loan, stays securely private.

Under the law, even if a title company unintentionally acts outside the complicated law — as reform advocates say several are doing now — the bank holding the mortgage could be penalized.

With the new rules going into effect in next year, banks are now applying extra scrutiny to the title companies they work with and ditching the ones that don't meet the rigorous compliance standards.

Cameron McFaddan, general counsel for TitleOne, said the Boise title and escrow company has added a new senior vice president to help management comply with the regulations. He said much of the work has been codifying existing compliance, auditing and security practices.

"It's extremely arduous. Having said that, it's due and these things are necessary, but it's painful to go

through," McFaddan said. He also said title companies are under tremendous pressure to make sure they're following the rules.

"You won't do business with banks unless you comply," he said.

Major banks, including JP Morgan Chase, Wells Fargo and Bank of America, have been scrambling to review the third-party vendors they

use. Most community banks, title companies and credit unions have yet to get on board.

The heightened regulatory environment could lead to some consolidation in the title industry, McFaddan said. As operating costs become more expensive, he expects to see more mergers in the field and potentially some clo-

sures. That could lead to higher prices for borrowers at firms that stay open.

"It's an expensive pill to swallow to be compliant. The title industry, especially in the West, is still small mom and pop shops, especially in rural counties. At that scale, it's going to be difficult for them to stay in business," he said.

David Jensen, a partner at law firm Moffat Thomas in Boise, said smaller banks and other lenders

could also have difficulty making sure they're working with service providers that are following the law. He said some new companies that claim to vet title companies and other service providers have started cropping up, though it's not clear if that will be enough to satisfy the CFPB.

"I'm sure for some of the smaller operations, there will be some hair-pulling at times as they try to work their way through it," Jensen said.

Expenses that title companies are expected to bear include the hiring of compliance attorneys and audit staff and the purchase of tracking software to make sure data aligns with new federal reporting requirements and with the information banks have on file.

The American Land Title Association, the leading national association for the title industry, has released a best practices study to help its members prepare for the changes. Jensen and McFaddan said that study is a good resource for title companies as they seek to comply with federal regulations and keep their relationships with mortgage lenders.

"It's looking like, at least at the start, the banks and lenders are going to look for the title companies to be complying with the ALTA's best practices as guidelines," McFaddan said.

Ryan Kelly with Dolan Media Newswires contributed to this story.

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