

Financial Services Committee
Housing and Community Opportunity Subcommittee

July 31, 2006

“Removing Barriers to Homeownership for Native Americans”

Statement of Ed Hellewell

On behalf of

The American Land Title Association

Chairman Ney, Congressman Renzi, and Members of the Subcommittee, thank you for inviting me to testify on behalf of the American Land Title Association, and to discuss "Removing Barriers to Homeownership for Native Americans."

My name is Ed Hellewell. I am a Senior Vice-President and Senior Underwriting Counsel for Stewart Title Guaranty Company and have 30 years experience in real estate and title insurance transactions. My involvement in Indian Country transactions began in 1995.

The American Land Title Association (ALTA), founded in 1907, is a national trade association representing more than 3,000 title insurance companies, title agents, independent abstracters, title searchers, and attorneys.

With more than 8,000 offices throughout the United States, ALTA Members provide services including title searches, examinations, and insurance protecting real property owners and mortgage lenders against losses from defects in titles. No other industry offers these services.

Additionally, many of these companies provide real estate information services including tax searches, flood certification, tax services, and credit reporting. ALTA member companies employ well over 100,000 individuals and operate in every county in the country.

The title insurance industry is currently helping to provide housing opportunities for Native Americans. But like others here today, while appreciating the progress made to date, we are hopeful improvements can be made to increase these opportunities. Today, title insurance availability supports the option of conventional mortgages for homes and homesite purchases in Indian Country by Native Americans. For example, Fannie Mae's Native American conventional loan initiative requires a title insurance policy. In addition, title insurance is required by some Department of Agriculture Rural Development (USDA) guaranteed loans. Further, title insurance is required by the Department of Housing and Urban Development (HUD) for the Section 184 guaranteed loan program encumbering assignment interests. In addition, ALTA member title and abstractor agents are occasionally asked to close loans, acting as escrow agents only, for government guaranteed loans.

But the common thread that generally runs through the process of government guaranteed loans and conventional market loans is the requirement for title information about the land and the interest in the land held by the borrower. That thread takes interested parties, except in the case of assignment interests, to the Land Titles and Records Office

(LTRO) of the Department of the Interior's Bureau of Indian Affairs (BIA) and the production of Title Status Reports (TSR).

Subsequent to the Subcommittee's July, 2005 hearing that included testimony about the production of TSR, we had the opportunity to discuss with representatives of HUD, USDA, and BIA possible solutions to these issues. As background, certified title status reports required a search and examination of the records beginning with the establishment of the Indian lands forward to the current date, and several certified TSRs might be requested during a transaction's process. Therefore, a possible solution was to utilize the practice followed outside of Indian Country. In such cases, subsequent to the original TSR, an examiner would begin the search with the last date title was checked and examine only the land records after that date. Ultimately, the September 29, 2005 Memorandum concerning an interim policy for Certified Title Reports was issued by BIA which adopted a form endorsement to a certified TSR in lieu of an additional certified TSR ("Endorsement To That Certified Title Status Report Dated ____ On Tract No. ____"). As I understood the interim policy, it was intended to reduce the workload and backlog at the LTRO. It was thought that would result in quicker production of title information needed by lenders, federal agencies, and title insurers. The timely production of title information would increase homeownership options and opportunities for tribal members as well as increase the number of tribe members who would benefit. However, this interim policy and accompanying endorsement form did not appear to have been implemented uniformly.

The recently revised form "Endorsement to Certified Title Status Report" developed by HUD and BIA after additional discussion appears to improve the form and the process. We were pleased to contribute to this effort and anticipate assisting with educational efforts designed to understand and aid implementation of the revised endorsement form and interim policy.

There are success stories in Indian Country. One is taking place with the Saginaw Chippewa Indian Tribe of Michigan. The tribe has built a title plant to serve the tribe's land title needs with the ultimate goal of compacting with BIA for the LTRO functions. Hundreds of conventional loans have been made and insured to date.

Another successful development was completed by the Winnebago Tribe of Nebraska that resulted in a planned community subdivision utilizing a conventional loan and title insurance policies.

On another front, NeighborWorks America committed seed funding to support a Tribal Land Title and Recordation Office Study. The study is intended to examine solutions to the continuing impediment to mortgage financed homeownership on tribal trust land caused by the time it takes to receive title information. The study will be focused on providing tribes considering establishing their own Land Title and Recordation Office with useful information as well as recommendations on legislative issues and tribal ordinances. Members of the study include tribal representatives, private sector housing and mortgage industry representatives, a title insurer representative, national

intermediary/foundations and government representatives. The initial meeting was held June 28 & 29, 2006. A site study is planned and tentatively the final report would be available in 2007. The Confederated Salish & Kootenai Tribes of the Flathead Reservation in Montana currently operate the LTRO for their reservation and consider it a successful means of overcoming time difficulties.

Another option for tribes is the utilization of land assignments to tribal members for homesites being developed by HUD's Office of Native American Programs, the Mashantucket Pequot Tribe of Connecticut, and BIA. This involves the creation of an office to record the land assignments and the issuance of title insurance. Such a program with procedures similar to a county recorder's office should be acceptable to most title insurers.

As a suggestion for improving the title information production process, if private industry title examiners were allowed to examine titles as is done outside of Indian Country, then a manpower savings would result. Currently, the position of the BIA is, as I understand it, that as federal documents, the land title records are not available to the public as they are in the case of county or parish land records.

Another measure for improving the process and eliminating barriers is the proposed operating guidelines and standards that BIA has indicated will be completed after the proposed leasing regulations are completed. But, the key to having standards and guidelines is for actual implementation and application of those principles. Persons and entities doing business with the LTRO will be able to utilize such guidelines to process transactions with a minimum of friction and avoid many delays because of a lack of knowledge about particular forms or procedures.

I would note that our experiences with various LTRO and the production of title information have ranged from excellent to baffling. We have found that the priority processing for home ownership expressed in the February 23, 1999 BIA memorandum has resulted in varying levels of commitment and service. Most of the LTRO personnel are capable, competent, and courteous. Occasionally, resistance is encountered that appears based on a lack of understanding about the role of title insurance as a necessary ingredient in providing a real option for homeownership by a member of a tribe. Of course, most parties recognize that staffing and task assignments are not always within the control of the LTRO or the BIA Regions. One positive LTRO example occurred when a transaction needed to close by year end, the borrower and lender wanted to examine the documents noted on the TSR, and the Aberdeen LTRO produced the copies in one day. In another case, documents needed to be recorded with an LTRO, with the consent of the Realty Officer, were filed and returned the same day by the Albuquerque LTRO.

Last, I would note that, in many circles, home ownership is viewed as contributing to economic development. The existence of transferable long-term interests in land is believed to contribute to the creation of value and ultimately of wealth. This, in turn, appears to lead to economic development and sustainable economies which are a related

goal for Indian Country. The concept of how home ownership contributes to economic development appears to be a basic theme of Hernando De Soto's book – The Mystery of Capital – Why Capitalism Triumphs in the West and Fails Everywhere Else. Indian Country in some respects is similar to some of the former Soviet-bloc countries where international efforts, including by ALTA members, are underway to map and describe land, to create land title recordation systems, and to create private ownership interests in land.

In conclusion, the ALTA and its members are committed to assisting with efforts to remove barriers to homeownership for Native Americans. We will continue to work with interested Indian Country parties and government agencies to develop solutions and options that will create and increase homeownership opportunities for Native Americans. I would be pleased to answer any questions that Subcommittee Members may have.