

# NEW STANDARDS FOR Notaries

— by MICHAEL LEWIS —

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he decline of the housing market and other industry challenges prompted the federal government to significantly increase its scrutiny of the mortgage finance industry. This stepped-up oversight is perhaps nowhere more evident than in the actions of the two-year-old Consumer Financial Protection Bureau (CFPB). ¶ The challenging environment has motivated lenders to take a hard look at how mortgages are originated

**Many lenders rely on notaries to preside at the signing of loan documents at closing. A movement to create national standards and a new designation for these signing agents is underway.**

and adopt new strategies for overseeing their third-party service providers. ¶ Of all the people involved in originating mortgages, notary signing agents—the independent contractors who conduct mortgage signings—received little attention. Yet that is changing. ¶ In order to comply with federal mandates, lenders now recognize that the tens of thousands of signing agents who represent them at the signing table need to be better qualified. ¶ Many lenders also are realizing that more often than not, signing agents are the only actual

face borrowers see, and how they perform their duties directly reflects on the lender.

### Organizing a response

As a result, a special committee called the Signing Professionals Workgroup (SPW), comprised of executives from more than a dozen major lenders and title companies (including Bank of America, JPMorgan Chase, Wells Fargo, CitiMortgage, U.S. Bank, Title Source Inc., LSI Corporation and First American Mortgage Services)—with the National Notary Association (NNA) serving as adviser—met throughout 2013 to create the first set of recommended best-practice standards for notaries handling loan signings.

These standards are called the Certified Signing Specialist Standards and they form the basis of a new designation for signing professionals: the Certified Signing Specialist™. An individual carrying that designation is a notary who has met all of the elements of the standards.

Traditionally, lenders, title companies and settlement services companies came up with their own guidelines for hiring signing agents. This led to a wide disparity in qualifications and often forced signing agents to meet redundant requirements.

“The standards and new certification designation are intended to provide a set of qualifications and practices for everyone concerned with what happens at the signing table while helping to reduce inconsistencies,” says National Notary Association President and Chief Executive Officer Thomas Heymann. The SPW anticipates implementing the standards in the second quarter of 2014 as an industry standard best practice.

One of the more important considerations of the SPW, and a key focus of many of the regulatory initiatives, was improving how lenders and title companies interact with borrowers.

“The banks and title companies depend on the professionalism and competency of the person at the signing table,” says Cristy Ward, chief strategy officer for Moon Township, Pennsylvania-based Mortgage Connect and a Signing Professionals Workgroup participant.

“Upholding the recommended standards assures a consistent closing experience for all of the parties involved in the transaction,” she says.

### The standards explained

The standards are broken down into five distinct categories:

- The Certified Signing Specialist Code of Conduct;
- Standardized signing script;
- Annual background screening;
- Annual examination; and
- Notary errors-and-omissions insurance.

#### *The Certified Signing Specialist Code of Conduct*

At the heart of the standards is the Certified Signing Specialist Code of Conduct. The code of conduct is divided into 10 guiding principles encompassing more than 100 indi-

vidual standards of practice. They cover everything from protecting signers’ privacy and acting in a professional manner to not providing unauthorized advice or services and reporting illegal or suspicious activity.

In order to receive and maintain the designation of Certified Signing Specialist, notaries will be required to sign an acknowledgment stating that they will abide by its standards.

#### *Standardized signing script*

One goal of the standards is to create a high-quality customer experience at the signing table—one that will be consistent from lender to lender and signing to signing. To that end, the standards include a uniform signing script that signing specialists will be expected to use.

The script outlines how a signing should be conducted and how signing specialists should answer questions about each document. It also indicates when to direct the signer to contact the lender and when the signing specialist should call the title company representative.

#### *Annual background screening*

Background screenings have become a commonplace expectation for signing professionals, but not all screenings are created equal. Different background screening providers may perform different records searches or score offenses differently.

This also is one of the areas where there is substantial redundancy for signing agents. Many report having to obtain three or more background screenings to satisfy the individual requirements of different clients.

For background screenings to be acceptable under the Certified Signing Specialist Standards, they must include searches in state, local and federal records and follow a point system assigned to specific offenses for calculating the pass/fail result.

In opting for an annual screening, the SPW noted that signing specialists routinely handle documents containing sensitive consumer financial information and are invited into borrowers’ homes.

“At the end of the day, it’s our job to protect the consumer and provide the best closing experience possible,” said Ward during an industry panel discussion at the NNA 2013 Conference last June.

#### *Annual examination*

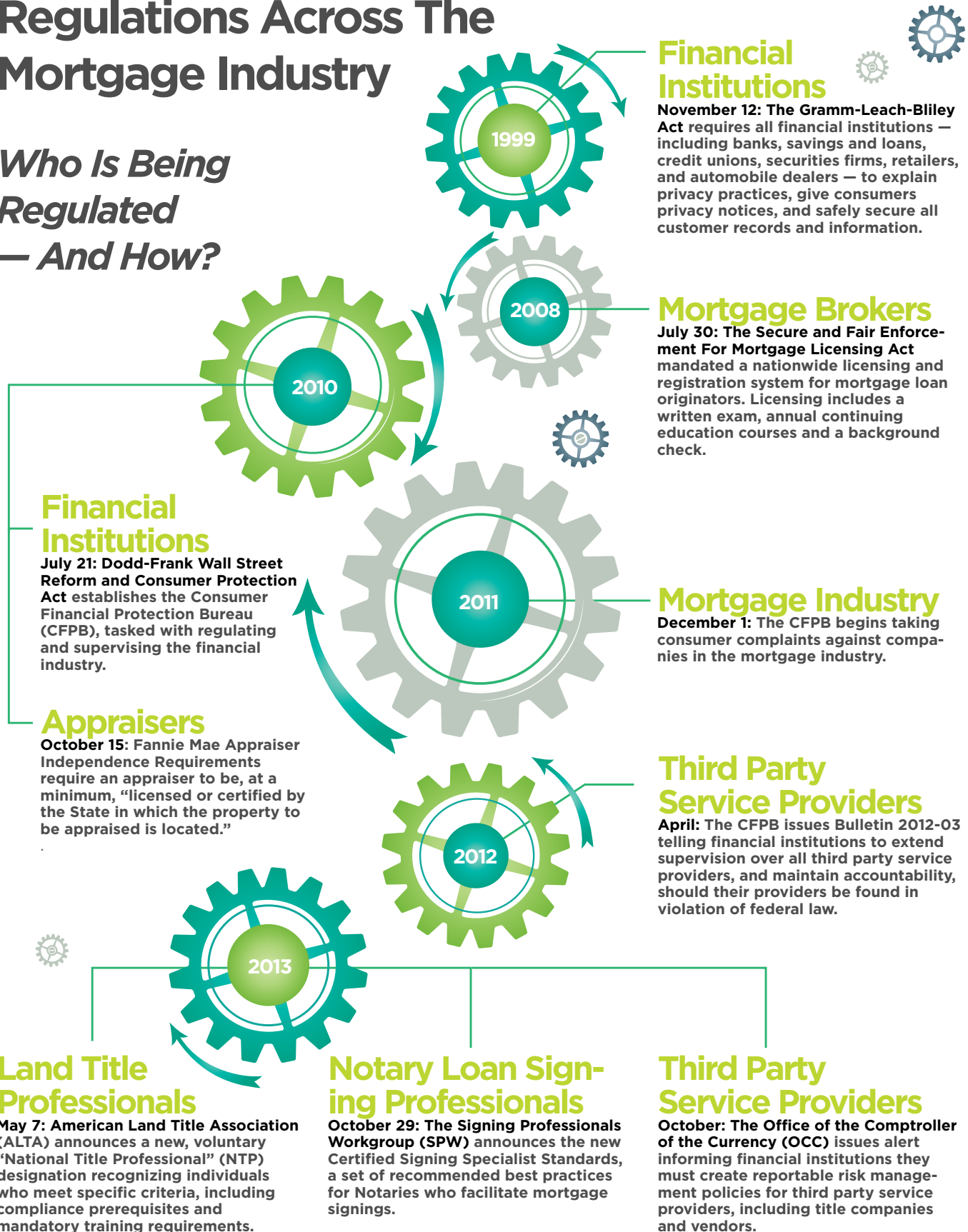
Notaries looking to become a Certified Signing Specialist will also be required to pass an annual exam—with a score of at least 80 percent—covering the signing script as well as knowledge of loan documents and best practices outlined in the code of conduct. Exams are expected to be administered by companies and organizations approved by the SPW. Training courses will be offered to prepare for the annual exam.

The annual exam is in keeping with the requirements for other professionals working in the real estate finance industry. Mortgage originators, for example, are required under federal law to complete at least eight hours of continuing education each year.

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# Regulations Across The Mortgage Industry

## Who Is Being Regulated — And How?



Sources: Bureau of Consumer Protection; NMLS Resource Center; American Land Title Association; CFPB; OCC

In addition, the SPW will continue its work, revising the standards as regulatory and market conditions change. Annual testing will be necessary to ensure that Certified Signing Specialists keep abreast of any updates.

#### **Notary errors-and-omissions insurance**

The final standard requires Certified Signing Specialists to maintain a minimum notary errors-and-omissions (E&O) insurance coverage level of \$25,000. While lenders and title companies commonly required signing agents to maintain E&O insurance, the amounts varied widely.

During SPW deliberations in 2013 in Las Vegas in the spring; Austin, Texas, in the summer; and Phoenix in the fall, participants debated coverage amounts, with some suggesting a minimum coverage of at least \$100,000. Because notary E&O insurance only covers notarial errors, the workgroup decided that \$25,000 in coverage was sufficient.

#### **Why now?**

Perhaps the most significant single development leading to the formation of the SPW and the publishing of Certified Signing Specialist Standards was the passage in 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and its creation of a new federal agency—the Consumer Financial Protection Bureau.

Shortly after its inception in July 2011, the CFPB set up a consumer complaint system that received more than 109,000 mortgage-related reports from disgruntled borrowers through January 2014.

Spurred by the flood of consumer reaction, the agency has issued thousands of pages of new regulations, recommendations and guidance. It also has brought numerous enforcement actions costing lenders and other financial companies more than \$750 million in refunds and penalties, according to CFPB announcements. And it has implemented an active audit program for the companies it regulates.

All of this work is focusing on protecting the consumer and pressing the financial industry to provide a much better and more consistent customer experience regardless of the bank or title company involved.

The publication in April 2012 of a CFPB Bulletin under the heading “Service Providers” prompted executives at several of the top lenders and title underwriters to start addressing what happens at the signing table.

The two-and-a-half-page bulletin noted that financial institutions cannot shift the burden of complying with federal law to the service providers they hire, but are ultimately responsible for ensuring that their service providers follow the law. A service provider that fails to uphold the law or has “weak internal controls” can harm consumers and create potential liabilities for themselves and their contracting firms.

“Lenders are being held accountable for the actions of their outside service providers, such as title companies and whoever they hire—including signing specialists,” NNA’s Heymann says.

The CFPB Bulletin from April 2012 instructed lenders to verify that their service providers comply with federal law and maintained “appropriate training and oversight of employees or agents.” In addition, lenders are expected to establish ongoing monitoring programs and put in place enforceable consequences for providers who fall short and fail to quickly address their shortcomings.

As a result, these expectations have been incorporated in the contracts between banks and title companies, which in turn affect signing services and signing specialists. Failing to abide by the terms of the contracts can have serious consequences for title companies and lenders.

“We can lose literally millions of dollars because of a poor signing,” Ward said during the NNA 2013 Conference. “So we have taken a lot of precautions to make sure we are looking at the quality of the loan docs that are coming back to us.”

The SPW’s focus from the outset has been to help organizations large and small carry out mortgage signings that comply with government mandates while protecting consumers. When the SPW initially came together in the fall of 2012, it discovered that there was a lack of standards across the country for obtaining a notary commission. Only nine states, for example, had any kind of background-screening requirement. More than 30 states do not require notary applicants to undergo training or testing.

Consequently, the SPW decided to develop the Certified Signing Specialist Standards for notaries who perform mortgage signings.

The standards will be rolled out as committees (see infographic) of the SPW draft the test and establish an application and vendor review process to license qualified companies to offer certification services. Those tasks are expected to be finished in the second quarter of 2014.

In addition, the SPW is creating procedures for monitoring and auditing vendors to make sure their programs remain in compliance with the standards.

The SPW is just beginning its work and will continue to meet in order to address standards for third-party service providers. The full SPW plans to meet again in March.

Lenders and title companies that want to join the SPW to help set industry standards are welcome and can become members via the SPW website ([www.signingprofessionalsworkgroup.org/become-a-member](http://www.signingprofessionalsworkgroup.org/become-a-member)).

The importance of the Certified Signing Specialist Standards to the mortgage origination industry cannot be underestimated, Heymann noted.

“Every notary who becomes a Certified Signing Specialist and every company that relies on them is operating under the same rules and knows exactly what to expect at the signing table,” he said. “Only good things will happen by everybody working together.” **MB**

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