



**Statement of the  
Title Appraisal Vendor Management Association (TAVMA)  
Before the Joint Committee on Judiciary  
Commonwealth of Massachusetts**

**Presented by**

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Executive Committee Member  
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Mr. Chairman, on behalf of TAVMA, I would like to thank the Committee for the opportunity to address you today concerning H.B. 1551. I am Ed Krug, a member of the Board of Directors of TAVMA and previously its President. I am a lawyer admitted to practice in Pennsylvania. For the past 36 years much of my practice has been as a real estate attorney. I served as Vice President to Stewart Title from 1997 to 2001. I was President of ServiceLink, a leading national title and appraisal vendor management company from 2001 to 2005. I have since returned to private practice.

TAVMA is a national trade association of providers and consumers of real estate title insurance, title information, appraisal and evaluation services, and closing and escrow services. Our members include leading title insurance companies, vendor management companies, and technology providers. Other members are regional providers here in New England. Our members include title insurance companies such as Fidelity Title, First American Corporation, Stewart Title and vendor management companies such as LSI, ServiceLink, Landsafe, National Real Estate Information Services and Transunion Settlement Services. Many of our members have provided services facilitating real estate transactions in Massachusetts for years.

Our vendor management members provide centralized services and products to lenders. This is of particular benefit to regional and national lenders who themselves use centralized offices to service the needs of their borrowers. Our customers rely on us to perform services that

they would otherwise have to perform as back office tasks with the related costs and inefficiencies. These services include order processing, scheduling, recruiting, quality control, and vendor management for appraisals, other property evaluation products, flood and tax certifications, property reports, title insurance, and settlement and escrow services. TAVMA members may use their own employees or a mix of their employees and independent contractors to provide these products and services in a cost effective, efficient and timely manner to lenders and their borrowers.

TAVMA introduced H.B. 1551 to dispel any confusion generated by the superior court ruling in Massachusetts Conveyancers Association, Inc. v. Colonial Title, which was not appealed. In our view, the MCA (n/k/a Real Estate Bar Association) has tried to use this case to rewrite and expand the scope of the Commonwealth's unauthorized practice statute, G.L. c. 221, sections 46 and 46A to prohibit competition. Specifically, REBA has used the case to discourage out-of-state settlement services companies from providing services in Massachusetts, in violation of the Commerce Clause of the United States Constitution. Importantly, the law of Massachusetts does not prohibit a non-attorney professional from providing settlement services, such as filling-in-the blanks on form documents, overseeing a closing, or issuing title insurance, but REBA has issued a purported ethics opinion declaring such functions to constitute the practice of law. It is perhaps significant that the Massachusetts Bar Association considered such an opinion and declined to so define the practice of law.

In most of the country, these types of services are routinely performed by non-attorneys. REBA's position not only restricts competition in Massachusetts, it creates serious confusion and uncertainty within the bar, as it muddles the line between proper and improper ethical conduct of Massachusetts real estate lawyers.

Contrary to repeated assertions by REBA that its goal in opposing H.B. 1551 is to protect the "public interest," the reality is that REBA is not protecting any interests but those of its attorney members and perhaps certain title insurance companies who only work with attorney agents. Lenders who hire attorneys to handle closings do so to protect their own interests – not those of the borrower. REBA suggests that the lender's lawyer is there for all parties. This is not so. The lawyer represents his or her own client, the lender. Imposing some obligation to look out for the interests of the borrower puts the lawyer in an untenable ethical conundrum. Simply put, the lender's closing attorney is not at the table to protect the "public interest." Indeed, MGL c. 184, s. 17B makes this clear, as it requires the application for a mortgage loan on certain residential property to state, in large font, that "[t]he responsibility of the attorney for the mortgagee is to protect the interest of the mortgagee" and that "[m]ortgagors may, at their own expense, engage an attorney of their selection to represent their interests in the transactions." From the start of each transaction, then, Massachusetts consumers are informed of their right to engage counsel and that the lender's attorney, if any, is not there to protect them. REBA should not confuse the important ethical standards that govern attorney conduct at such closings.

REBA's position stifles competition and limits choices of Massachusetts consumers. TAVMA, in supporting H.B. 1551, seeks to increase competition which, without question, benefits Massachusetts consumers. In a comment letter dated October 6, 2004 to Representative Kujawski, the Federal Trade Commission, whose charge is to protect competition and consumers, stated that HB 1551, "if passed, likely would benefit Massachusetts consumers." Although REBA frequently suggests that competition among attorneys is sufficient to provide a consumer benefit, the FTC stated that H.B. 1551 "would benefit consumers by improving their ability to choose their preferred mix of cost, convenience, and quality." REBA, on the other hand, opposes H.B. 1551 not to protect borrowers, but to allow its members to collect title insurance premiums and closing fees. The FTC further noted that the "benefits competition brings to consumers of services provided by the 'learned professions' are no different from the benefits derived from competition in manufacturing and service industries." Moreover, when consumers have the choice of using an attorney or not, the FTC observed that there is a competitive effect on the fees that lawyers charge, i.e., the presence of non-lawyers in the marketplace causes lawyers to keep their fees lower.

Importantly, the FTC concluded that H.B. 1551 "is unlikely to result in any consumer harm." While we are all affected today by the economic decline, which originated in the real estate market, no one has suggested that this decline is attributable to loans being closed by notaries or non-attorneys examining title. Requiring title insurers to use attorneys to examine title and requiring lenders to use attorneys to perform closings – when these attorneys are not representing the borrower's interest -- do not provide benefits to consumers that outweigh consumers' interests in choice and lower costs.

I would like to address some of the specific tasks that H.B. 1551 would allow non-attorneys to engage in. First, it would permit non-attorney settlement service providers to fill-in-the blanks on form deeds, mortgages, leases, and agreements in connection with the sale or lease of real estate. This work is commonly performed by lenders, title agents, and realtors in many states. For the most part in residential real estate transactions, these documents are highly standardized and in my experience changes to their form are not permitted by lenders. Second, the bill would permit non-attorneys to examine title, remove exceptions and issue title insurance policies, which activities are largely governed by contract between title companies and their agents. The title insurance company and its title insurance agent share the risk of mistakes and there is no practical reason to require a title company to restrict its pool of potential agents to attorneys. Like national lenders, national title underwriters have their own lawyers and do not require settlement services to be provided by another attorney who is simply not necessary to protect the lender's interests. The title companies require their agents to carry errors and omissions insurance comparable to the limits on typical attorney malpractice insurance policies as additional protection. Additionally, when title agents perform closings and settlements, most lenders require that they obtain closing protection letters from the title company, which typically require fidelity insurance in addition to errors and omissions.

Regardless of who acts as title agent, whether a lawyer or non-lawyer, the title company is the entity that ultimately holds the risk when a title policy is issued. Title insurance companies

use agents who simply do not need to be lawyers – as REBA insists. In my experience, the claims rates of title companies for their non-attorney agents is no higher than for their attorney agents, which supports the FTC’s position that opponents of H.B. 1551 have not demonstrated that prohibiting non-lawyers from serving as title agents benefits the “public interest.”

Over the years, numerous companies have offered non-lawyer or centralized settlement services in Massachusetts. Yet, since the Colonial Title decision was issued, REBA has singled-out and sued only one non-attorney title insurance agent, National Real Estate Information Services, a Pennsylvania company. REBA’s case against National Real Estate is pending in the federal District Court in Boston. Like most other large settlement service providers doing business in Massachusetts, National Real Estate hires Massachusetts attorneys to conduct mortgage loan closings in the Commonwealth. Even though this is the case REBA claims that National Real Estate only allows the attorneys to act as notaries public, and, as a result, is somehow engaged in the unauthorized practice of law in this Commonwealth. In other words, even when the competition complies with REBA’s demands and hires lawyers, REBA still argues that the law is being violated.

What is more disturbing, however, is that National Real Estate is a member of TAVMA and its General Counsel, Tom Lammert, has publicly spoken in favor of H.B. 1551 and against REBA’s crabbed reading of the law. By suing National Real Estate after H.B. 1551 was introduced, REBA has tried to stifle its participation before you, this legislature, in advocating for clarifying legislation. Indeed, REBA has turned Mr. Lammert into a witness and has prevented him from sitting in this chair and testifying here today.

REBA’s interpretation of Colonial Title and its self-interested restriction of competition are unfair, unsupported by Massachusetts law, and in violation of the Commerce Clause of the United States Constitution, which prohibits just this sort of arbitrary restriction on interstate competition. Indeed, REBA has chosen not to pursue claims against other companies and it has announced that it will not pursue claims against the Massachusetts attorneys who perform closings for those companies. Some of the attorneys who perform closings for TAVMA members and other non-attorney title agencies are themselves REBA members. Plain and simple, REBA’s opposition to H.B. 1551 is about preventing competition; competition that benefits Massachusetts consumers.

For all of these reasons, on behalf of TAVMA, I urge you to favorably report H.B. 1551 out of this committee. Thank you.