2008: The Year of the Bailout

By Matt Carter and Glenn Roberts Jr.

2008 has been an unforgettable year for the real estate industry, and one that many industry professionals would not care to repeat in their lifetime.

The federal government engaged in a series of incredible actions in an effort to stave off an economic collapse, sales of bank-owned properties and short sales accounted for the bulk of real estate transactions in some market areas, and unemployment has been rising — which will likely feed a new flurry of foreclosures.

Home prices have been jetting down as fast or faster than they shot up during the boom in some hard-hit markets, and tightening mortgage requirements and the credit crunch have locked out some would-be buyers. Few real estate companies will emerge unscathed from this economic and housing downturn, and some will not make it through this difficult time.

In this special report, Inman News takes a look at the 10 biggest news topics from the past year.
# Table of Contents

**INSIDE**

**Part 1  Bailout** .................................................. page 4
With the benefit of hindsight, many of the measures employed by the federal government just a year ago to unfreeze credit markets now seem, if not futile, almost quaint ...

**Part 2  Legislation** .................................................. page 5
In 2008, lawmakers were forced to put aside some of their differences about Fannie Mae, Freddie Mac and Federal Housing Administration loan guarantee programs, passing legislation that kept money flowing into mortgage lending in 2008 ...

**Part 3  Regulations and Investigations** ...................... page 7
Just about every financial crisis can be expected to spawn new regulations and crackdowns. But 2008 has produced a bumper crop of new rules and investigations, with more on the way ...

**Part 4  Bankruptcies and Shutdowns** ............................. page 9
The bankruptcies, takeovers, downsizing and bailouts of 2008 will have repercussions for the real estate industry for years to come ...

**Part 5  State of the Real Estate Market** ..................... page 9
In January 2008, the National Association of Realtors anticipated that sales of resale homes would actually increase in 2008 compared to 2007, with the median resale-home price remaining roughly flat. What a difference a year makes ...

**Part 6  The Foreclosure Wave** .................................. page 11
While foreclosure data provider RealtyTrac reported that foreclosure-related filings dropped 7 percent nationwide in November compared to October, the volume of properties with foreclosure filings was up 28.3 percent compared to the same month last year ...

**Part 7  Consolidation and Collaboration** ..................... page 12
Major consolidation in the financial services industry in 2008, prompted by an economic upheaval of historic proportions, has altered the landscape of U.S. banking and lending ...

**Part 8  DOJ v. NAR Settles** ..................................... page 13
After a two-year federal investigation and a three-year legal battle, the U.S. Justice Department and National Association of Realtors trade group this year settled a lawsuit that had charged NAR with approving multiple listing service policies in violation of federal antitrust laws ...
Table of Contents (cont’d)

Part 9 RESPA ................................................................. page 14
After six years of trying, 2008 was the year the Department of Housing and Urban Development finally pushed through an update of rules governing the marketing and sale of mortgage loans and settlement services such title insurance to consumers ...

Part 10 Fair Housing Act and Internet Law .............................. page 15
Online classified and community site craigslist prevailed this year in a legal battle at the intersection of Internet law and the federal Fair Housing Act ...

2008 Reader’s Choice ......................................................... page 16
Inman News has compiled a list of the top-10 “Most Popular” news stories of 2008, based on total page views, and a “Most Talked About” top-10 list featuring those articles that received the highest volume of comments in 2008.
1. Bailout:

With the benefit of hindsight, many of the measures employed by the federal government just a year ago to unfreeze credit markets now seem, if not futile, almost quaint.

As 2008 began, Federal Reserve Chairman Ben Bernanke was the government’s point man, and monetary policy was the name of the game. By year-end, the Fed had all but run out of room to cut short-term interest rates, and was essentially printing money to finance billions in short-term loans to banks and financial institutions through auctions.

As companies with household names like Bear Stearns, Countrywide Financial Corp., Washington Mutual, IndyMac Bank, Wachovia, Lehman Brothers, Merrill Lynch, AIG, Fannie Mae and Freddie Mac filed for bankruptcy protection or were taken over by competitors or the government, Treasury Secretary Henry Paulson was increasingly the man in the spotlight.

After their plan to provide a capital backstop for Fannie and Freddie led to the mortgage giants being placed into government conservatorship in September (see story), Paulson and Bernanke went to Congress to ask for the authority to borrow up to $700 billion to purchase “toxic assets” like mortgage-backed securities from banks and other financial institutions.

As more and more homeowners became delinquent or defaulted on their mortgages, they said, it was becoming impossible to value those securities. Fears about who owned them and the magnitude of the losses they might be facing threatened to bring lending to a grinding halt. Everyone from corporations and small businesses to students seeking college loans might be affected, the Treasury Secretary and Fed chairman said.

After quelling a revolt against the bill in the House of Representatives, Congress heeded Paulson and Bernanke’s warnings and passed the Emergency Economic Stabilization Act (EESA). Signed into law on Oct. 3 by President Bush, the act created the Troubled Asset Relief Program (TARP) — and gave the Treasury Department a great deal of leeway in running it.

Less than two weeks later, Paulson announced a new direction for the program. Instead of buying troubled assets, the money Treasury was borrowing to fund TARP would be used to “recapitalize” banks by purchasing an ownership stake in them. By the time Congress got its first report on the TARP program in early December, Treasury had purchased $155 billion in preferred stock in 87 banks and committed to a $40 billion investment in AIG.

Many lawmakers are upset at the prospect of banks using the money to acquire competitors, or to prop up their own share price through stock repurchases. In a recent report to Congress, the Government Accountability Office noted that there are few restrictions on the money’s used, and no system in place to measure results (see story).

Placing Fannie Mae and Freddie Mac in conservatorship — along with a $600 billion commitment by Federal Reserve to buy their debt and mortgage backed securities — has brought interest rates on conforming loans down more than 1 percent (see story). The Federal Home Loan Banks have also been given more leeway to purchase mortgage-backed securities issued by Fannie and Freddie.

But by many indications, credit remains tight. The “spread” between mortgage rates and Treasuries remains elevated, and underwriting standards for many loans have gotten tougher.

Next year, Congress and the Obama administration are expected to consider other measures to stimulate the economy — such as a massive spending program on roads and other infrastructure — as well as stepped up relief for borrowers.
2008: The Year of the Bailout

Many believe that stemming foreclosures and home price declines will not only help borrowers, but stem losses among banks, financial institutions and investors with exposure to mortgage backed securities (MBS), collateralized debt obligations (CDOs), and credit default swaps (CDS).

The Bush administration has launched several foreclosure prevention initiatives dating back to 2007, including the FHASecure refinance program and the (voluntary) HOPE NOW Alliance of lenders and loan servicers.

The HOPE NOW Alliance has developed streamlined guidelines for engaging in workouts with borrowers. While initially criticized for not keeping pace with increases in delinquencies and foreclosures, the group’s latest numbers suggest that such efforts may now be making some headway.

Sweeping legislation passed by Congress in July, the Housing and Economic Recovery Act, or HERA, created a new $300 billion FHA loan guarantee program, Hope for Homeowners, aimed at helping troubled borrowers refinance into more affordable loans when their existing lender agreed to forgive part of their debt. When lenders proved reluctant to participate, the program’s requirements were relaxed to allow lenders to take smaller write downs.

Another idea put forward by FDIC chairwoman Sheila Bair is for the government to guarantee up to half of lenders’ losses when they engage in loan modifications with borrowers using standards developed by FDIC. It would cost taxpayers about $24 billion to ensure 2.2 million loan modifications, the FDIC estimates.

It remains to be seen how many borrowers who are granted loan modifications will stay current on their loans. The FDIC maintains that when payments are reduced to an affordable level, about two-thirds of borrowers who receive loan modifications can be expected to avoid foreclosure. Recent statistics gathered by federal bank regulators suggest more than half of borrowers granted loan modifications in the first quarter of 2008 were in default again six months later (see story).

If all else fails, some lawmakers continue to push for modifications to the bankruptcy code that would allow judges to force lenders to “cram down” mortgage loan principal — a measure endorsed by Sen. Barack Obama during his campaign for the presidency. Critics say cramdowns would raise the cost of all mortgages, because investors who finance home loans would view it as an added risk.

2. Legislation

In 2008, lawmakers were forced to put aside some of their differences about Fannie Mae, Freddie Mac and Federal Housing Administration loan guarantee programs, passing legislation that kept money flowing into mortgage lending in 2008.

Although many issues were left unresolved, Congress managed to prop up the three pillars of mortgage lending, even as the load on them increased dramatically.

After years of bickering over the proper course for scandal-plagued Fannie and Freddie, the collapse of the secondary market for “private-label” mortgage-backed securities in August 2007 forced Congress to act.

With a recession looming and money for jumbo loans scarce, in February Congress passed HR 5140, the Economic Stimulus Act of 2008 (see story).

The bill not only provided billions in taxpayer rebates, but bumped the $417,000 conforming loan limit for Fannie and Freddie to 125 percent of the median home price in high cost markets, capping it at $729,750.
The bill also allowed FHA to push past its $362,790 limit and into the “conforming jumbo” space alongside Fannie and Freddie.

The Bush administration got behind the bill only after receiving assurances from Democrats that Congress would pass legislation strengthening oversight of Fannie and Freddie and approve an “FHA modernization” bill updating the government loan guarantee program.

As the credit crunch morphed into a credit crisis, Fannie, Freddie and FHA were buying or guaranteeing more than three in four mortgage loans. At the end of July, amid rising fears that Fannie and Freddie’s mounting losses would require the government to step in, Congress passed HR 3221, the Housing and Economic Recovery Act, or HERA (see story).

HERA was a sweeping bill that created a new, independent regulator of Fannie and Freddie — the Federal Housing Finance Agency (FHFA) — and authorized the Treasury Department to buy the companies’ debt or stock. As it turned out, that power would soon be exercised. Fannie and Freddie were placed into government conservatorship in the first week of September — a calamity that nonetheless has helped bring mortgage rates down (see top story three, the bailout).

HERA also included some of the FHA modernization provisions sought by the Bush administration. During the boom, FHA loan guarantee programs lost much of their market share to subprime lenders, with borrowers using private mortgage insurance or “piggyback” second loans instead. To make FHA loan guarantee programs more competitive, the administration proposed expanding the pool of eligible borrowers and introducing “risk-based” pricing (see story).

Some Democrats initially had different ideas about so-called FHA modernization, pushing for elimination of the program’s 3 percent minimum down-payment requirements. In the end, with foreclosures on the rise, Congress instead decided to raise FHA minimum down-payment requirements to 3.5 percent beginning Jan. 1.

HERA also put an end to seller-funded down-payment assistance programs. HUD alleged the programs, primarily funded by homebuilders, artificially inflate home prices and dramatically increases the risk of borrower default (see story).

To HUD’s chagrin, HERA also placed a one-year moratorium on the implementation of risk-based pricing of FHA loan guarantees. The moratorium, currently set to expire on Sept. 30, has become a bargaining chip in the debate over seller-funded down-payment assistance.

After HERA’s passage, Rep. Barney Frank, D-Mass. championed legislation to reform, rather than end, the practice. The bill offered limited implementation of risk-based pricing as a bone to the Bush administration, but never made it to the floor for a full House vote (see story). Democrats’ gains in the November election could bring the issues of seller-funded down-payments and risk-based pricing back to life in 2009, however.

Another major issue yet to be resolved — although perhaps not for years to come — is the ultimate fate of Fannie Mae and Freddie Mac. If and when secondary markets for mortgage-backed securities begin functioning again, Congress must decide whether to liquidate the companies, return them to private ownership, or nationalize them outright and operate them as an arm of the government (see story).

Finally, HERA knocked the jumbo conforming loan limit in high cost areas back down to 115 percent of the median home price, with a cap of $625,500, beginning Jan. 1. The floor, or maximum loan size in “normal markets,” will return to $417,000 for Fannie and Freddie and $271,050 for FHA (see story). With the financial crisis continuing and secondary mortgage markets still in disarray, Fannie, Freddie and FHA are involved in funding nine out of 10 loans, and real estate industry groups are pushing for the temporary $729,750 limit in high cost areas to be reinstated.
HERA also created a $7,500 tax credit for first-time homebuyers, but the industry has grumbled about its July 1, 2009, expiration date and a requirement that the credit eventually be repaid. Although the Obama administration has said one of the main thrusts of its economic recovery plan will be to create jobs by funding infrastructure projects like roads and bridges, real estate industry groups are pushing for buyer incentives like tax breaks and interest-rate buy downs (see story).

3. Regulations and Investigations

Just about every financial crisis can be expected to spawn new regulations and crackdowns. But 2008 has produced a bumper crop of new rules and investigations, with more on the way.

Lawmakers, regulators and state attorneys general were all out looking to do damage control, making new laws and enforcing old ones in an attempt to make sure the next crisis doesn’t look exactly like this one.

One easily identified factor in the current crisis was the blind faith investors around the world put in mortgage-related investments. The trillions of dollars that flooded into mortgage lending made it easier than ever to get a loan, pushing up home prices to unsustainable levels. When home prices collapsed, the resulting losses rippled through the entire financial system, with devastating effects on the global economy.

By the end of September, the FBI said its investigation of potential fraud by companies involved in originating, funding and securitizing mortgage loans included 26 companies, while the SEC revealed it had more than 50 ongoing investigations into the valuation of mortgage-related investments (see story).

New York Attorney General Andrew Cuomo, who has made headlines with his own investigations, announced an agreement with Fannie Mae and Freddie Mac intended to ensure the independence of home appraisals, and another with major rating agencies that review pools of loans packaged into securities sold to investors.

The Mortgage Bankers Association took issue with Cuomo’s claims that the agreements with Fannie and Freddie will protect appraisers from pressure by lenders to inflate home prices.

But this fall, four groups representing appraisers said they agreed with an Associated Press analysis that characterized oversight of their profession — overhauled after the Savings and Loan crisis — as “crippled” and “ineffective.”

The balkanized nature of the regulatory system governing investment banks, hedge funds, mortgage lenders and other big players in the financial crisis was one factor in the lack of oversight, the Bush administration said in launching a sweeping plan to reorganize the system.

The plan envisions just three federal regulators: the Federal Reserve, which would be granted expanded powers to serve as a “market stability” regulator; a single “prudential financial regulator” of banks instead of the five agencies in place today; and a “conduct of business regulator” similar to the Securities and Exchange Commission to oversee financial firms (see story).

Turning their attention to mortgage lenders, the Federal Reserve in July rolled out new regulations intended to curb deceptive lending practices. Most of the changes to Regulation Z, which spells out enforcement of the Truth in Lending Act, don’t take effect in October 2009, but will apply to all lenders whether they are supervised at the state or federal level.

Measures that will apply to all mortgage loans include prohibitions against coercing appraisers, and a requirement that lenders provide a good faith estimate of loan costs within three days after a consumer applies
In revamping Regulation Z, the Fed also banned deceptive or misleading advertising practices — such as hiding the fact that a rate or loan payment can change — but withdrew a proposal to require that mortgage brokers enter into written agreements with borrowers before collecting yield spread premiums (see story).

The Housing and Economic Recovery Act of 2008, HR 3221, not only created a new regulator for Fannie Mae and Freddie Mac, the Federal Housing Finance Agency, but a national licensing system for residential loan originators who must meet minimum qualifications.

Before those changes kick in, lenders in most states were becoming subject to new guidance issued in 2006 and 2007 by federal bank regulators governing the origination of subprime and nontraditional loans. By July 2008, the Conference of State Bank Supervisors reported that 40 states had adopted the federal standards for subprime lending, and 45 states had adopted the guidance for nontraditional mortgages (which include pay-option adjustable-rate mortgages).

Not that state attorneys general weren’t finding alleged violations of existing law. In October, Countrywide Financial Corp. agreed to an $8.68 billion settlement providing loan modifications for about 400,000 borrowers. The settlement was prompted by allegations of unfair and deceptive lending practices in California, Arizona, Connecticut, Florida, Illinois, Iowa, Michigan, North Carolina, Ohio, Texas and Washington (see story).

With more homeowners getting behind on their mortgages, state and local law enforcement officials around the country cracked down on “foreclosure rescue” scams that charged desperate borrowers for assistance they didn’t provide — or in some cases, bilked them out of their homes.

The Florida Attorney General’s Office, for example, sued a company in October which prosecutors said talked 600 homeowners into making monthly payments to the company instead of their mortgage servicer.

The following month, Illinois’ Attorney General filed lawsuits against seven companies that collected upfront fees to negotiate with lenders, in violation of the state’s Mortgage Rescue Fraud Act, and said 22 companies had been sued for such violations.

California’s Attorney General announced the arrests of three people associated with a foreclosure rescue company that allegedly charged troubled homeowners $1,500 to $5,000 in upfront fees and promised to help them renegotiate their mortgages.

In California, real estate brokers who want to negotiate loan modifications with lenders on behalf of clients must enter into written agreements if they plan to collect fees upfront. The California Department of Real Estate must sign off on the wording of the advance fee agreements and accounting practices the brokers plan to use (see story).

Washington State lawmakers passed a law in 2008 that places a fiduciary duty on investors who purchase pre-foreclosure properties from homeowners, which a lawyer who works with them said would create “significant new burdens.”

California, North Carolina, Maryland and New Jersey have new laws that are aimed at slowing down the foreclosure process, and Massachusetts and Connecticut have strengthened the right of some borrowers to “cure” delinquent loans. But with statistics showing more than half of borrowers who are granted loan modifications re-defaulting after six months, some critics say those measures may only be delaying the inevitable and prolonging the foreclosure crisis (see story).
4. Bankruptcies and Shutdowns

The bankruptcies, takeovers, downsizing and bailouts of 2008 will have repercussions for the real estate industry for years to come.

That’s because not only the resulting mass layoffs and tightening of lending standards expected to dent home sales and fuel the cycle of falling home prices and foreclosures, but because consolidation is changing the shape of the industry.

Real estate brokerages, builders, mortgage lenders, and title insurers all felt the chilly winds of change blowing through the industry in what could go down as one of the most tumultuous years on record.

The Help-U-Sell Real Estate franchise company, which offers flat-fee services to sellers through 450 franchise offices in the country, entered Chapter 11 bankruptcy proceedings in August. Founded in 1976, Help-U-Sell has survived previous downturns, and the company’s chief operating officer vowed it would emerge from reorganization (see story).

The downturn also continued to take a toll on home builders. According to the Home Builder Implosion-Meter Web site, since 2006 a total of 59 major builders have shut down, declared bankruptcy, or required a bailout by corporate parents or peers.

In 2008, Florida-based luxury home builder WCI Communities Inc. was one of the most prominent victims in 2008, filing for Chapter 11 bankruptcy protection in August for 130 subsidiaries. The company cited impending defaults on up to $1.8 billion in debt (see story).

The carnage in mortgage lending and mortgage finance has been equally dramatic, with Bear Stearns, Countrywide Financial Corp., Washington Mutual, IndyMac Bank, Wachovia, Lehman Brothers, Merrill Lynch, AIG, Fannie Mae and Freddie Mac either filing for bankruptcy protection or taken over by competitors or the government.

As the year came to a close, the title insurance industry was shaken up by LandAmerica Financial Group. Inc.’s Chapter 11 bankruptcy filing, with rival Fidelity National Financial Inc. swooping in to acquire the company's underwriting subsidiaries, Lawyers Title Insurance Corp. and Commonwealth Land Title Insurance Co.

The deal could vault Fidelity past rival First American Corp. to become the nation’s biggest title insurer, with a 45 percent market share. Together, Fidelity and First American would control 74 percent of title insurance underwriting, lawyers for Old Republic International Corp. said in objecting to the sale (see story).

5. State of the Real Estate Market

In January 2008, the National Association of Realtors anticipated that sales of resale homes would actually increase in 2008 compared to 2007, with the median resale-home price remaining roughly flat.

What a difference a year makes. In its latest forecast in early December 2008, NAR anticipates that sales of resale homes will fall 12.3 percent this year compared to 2007, with the median price plummeting 9.3 percent.

NAR expects sales of resale homes to bump up 4.7 percent next year compared to this year, with the median resale price up 0.4 percent. The sales forecast is much bleaker for new single-family homes: sales down 37.3 percent this year and down another 19.1 percent in 2009, with the new-home median price falling 7.8 percent this year compared to 2007.
Even when sales do rise, it isn’t necessarily a sign of a healthy market. In California, for example, the California Association of Realtors expects sales of resale detached homes to increase 12 percent in 2008 compared to 2007, and to climb another 12.5 percent in 2009.

The statewide Realtor group reported that the sales spike was fueled by price drops among distressed properties, and an estimated 22.2 percent of sellers sold their home at a loss in 2008, compared to 1.9 percent in 2006 and well above the historic average of 7.7 percent.

The statewide median price of homes in California is expected to fall 31.7 percent in 2008 to $381,000, and to fall another 6 percent in 2009 to $358,000, according to the group’s chief economist, Leslie Appleton-Young.

In October 2008, PMI Mortgage Insurance Co. reported that 24 of the 50 largest housing markets are at risk for price declines in the next two years, and the chance of price declines was very high for 16 of the 50 largest markets. Also, the report found that risk of price declines jumped in 359 of 381 metro areas during the second quarter.

The Standard & Poor’s/Case-Shiller National Home Price Index dropped a record 16.6 percent year-over-year in third-quarter 2008, while the National Association of Realtors reported in November 2008 that the median price of U.S. resale homes plunged a record 11.3 percent year-over-year for the month of October.

NAR also reported that single-family resale home prices dropped 9 percent in third-quarter 2008 compared to the same quarter in 2007, with four out of five metro areas tracked in the report experiencing year-over-year price drops. Foreclosures and short sales accounted for 35 percent to 40 percent of all home-sale transactions in third-quarter 2008, the association also reported.

Fitch Ratings analysts warned in December that rising unemployment could mean a longer and harder fall for home prices, with unemployment approaching 8.5 percent by 2010. If that prediction proves true, the peak-to-trough decline in home prices could exceed 30 percent, analysts said.

Also in December, economists at University of California, Los Angeles, noted that the home-price slide since 2006 has amounted to an estimated $4.5 trillion loss in wealth, based on a 22 percent decline in home prices from a 2006 peak.

Many real estate brokerage companies have been hit hard by the market downturn, with some agents and brokers leaving the business or taking on second jobs to make ends meet.

NAR membership dropped 9.24 percent from November 2007 to November 2008, and NAR is forecasting that membership could drop as low as 1.06 million in 2009 — down from a peak of 1.36 million in 2006.

Real estate technology companies, too, have felt the weight of the market slowdown. Online real estate company Zillow announced it was laying off 40 people, or about 25 percent of the company’s workforce, citing “unprecedented economic events” including the likelihood of “a prolonged recession.” And high-tech brokerage company Redfin similarly cited “drastic economic changes” in laying off about 20 workers, or 20 percent of its employees.

Online real estate marketing company HouseValues in January 2008 announced the layoff of 45 employees and the resignation of its chief financial officer, following a layoff of 100 workers in fall 2007. That company had a net loss of $4.3 million for the first three quarters of 2008, compared with a net loss of $2.5 million for the same period last year.
6. The Foreclosure Wave

While foreclosure data provider RealtyTrac reported that foreclosure-related filings dropped 7 percent nationwide in November compared to October, the volume of properties with foreclosure filings was up 28.3 percent compared to the same month last year.

And the filings drop is likely to be a temporary lull, RealtyTrac officials and other industry experts have noted, as temporary foreclosure moratoriums imposed by Fannie Mae, Freddie Mac and some states — intended to stall the foreclosure process and allow workouts — may simply delay rather than prevent some foreclosures.

Jay Brinkmann, the Mortgage Bankers Association’s chief economist said this month that there will be a projected 2.2 million foreclosure starts in 2008 and that the impact of job losses and the continuing economic decline could lead to more foreclosure starts in 2009.

A record one in 10 home loans were delinquent or in foreclosure by the close of September 2008.

RealtyTrac officials, too, have said that the volume of foreclosed, bank-owned (REO) properties could increase from an estimated 880,000 in 2008 to 1 million in 2009.

Nevada, Florida, Arizona, California, Michigan, Georgia, Ohio, Colorado, Utah and Idaho had the highest foreclosure rates in November, RealtyTrac reported, and in some markets the sales of properties that are either REOs or in some stage of foreclosure account for the lion’s share of real estate transactions. Markets that have experienced overbuilding and substantial job loss have been hot spots for foreclosures.

States and the federal government have announced a series of programs that are intended to assist homeowners in keeping their homes through modified loan terms, though those programs are reportedly poor performers.

According to statistics presented this month by U.S. Comptroller of the Currency John C. Dugan, about six of 10 troubled borrowers who were able to negotiate loan modifications with their lenders during first-quarter 2008 had re-defaulted on their loans within eight months.

And about 36 percent of borrowers had re-defaulted and were more than 30 days past due after three months.

Members of HOPE NOW — a coalition of loan servicers that is intended to assist in preventing foreclosures — reportedly engaged in about 2.7 workouts from July 2007 through October 2008 — two-thirds of those were repayment plans (not modifications of the loan terms).

The Federal Deposit Insurance Corp. in November pitched a plan that would provide incentives to lenders to engage in up to 2.2 million loan modifications in an effort to stem the tide of foreclosures. The plan could cost an estimated $24.4 billion but would prevent an estimated 1.5 million foreclosures by the close of 2009, according to FDIC officials.

Some members of Congress have been critical on whether spending as a part of the $700 billion federal Troubled Asset Relief Program has done much to prevent foreclosures.
7. Consolidation and collaboration

Major consolidation in the financial services industry in 2008, prompted by an economic upheaval of historic proportions, has altered the landscape of U.S. banking and lending. Wells Fargo & Co. moved to acquire Wachovia Corp., JP Morgan Chase picked up Washington Mutual Bank, and Bank of America brought aboard Countrywide Financial Corp.

The real estate brokerage industry was not immune to consolidation: many companies consolidated offices and shed staff to trim costs. Brookfield Residential Property Services, a Toronto-based company that operates Canada’s Royal LePage brokerage company, bought up GMAC Home Services LLC. GMAC Real Estate’s company-owned operations ranked 10th in total transaction sides and fifth in transaction volume in 2007 among U.S. real estate companies, according to real estate research and information company RealTrends. Brookfield more than doubled its agent count with the acquisition of GMAC Home Services — growing it from about 15,000 to 33,000.

Consolidation and collaboration efforts moved forward in the multiple listing service industry, too. CAL MLS, a nonprofit subsidiary of the California Association of Realtors, launched this year with a 17-member board. The organization is led by Scott Kucirek, a former executive for a Prudential brokerage company and a co-founder of ZipRealty. CAL MLS has a directive to establish a statewide property information database that could evolve as a statewide MLS system.

California is also home to MLSAlliance, a data-sharing network of MLSs that gained members in 2008, and CARETS, an effort by a group of mostly Southern California MLSs to standardize data and rules across MLS boundaries. The MLSAlliance data-sharing effort covers most of the state’s 58 counties and is available to about 190,000 brokers and agents. ENeighborhoods, a real estate technology vendor that powers the MLSAlliance system, also operates similar data-sharing networks in the Gulf Coast region of Florida and in Virginia.

A group of seven Northern California MLSs in September announced plans for a data-sharing and exchange system that is intended to eliminate the need to join multiple MLSs. The new system, expected to be in operation during the first quarter of 2009, will allow members of any of the participating MLSs to access information for all of the participating MLSs, and to enter and update property listings for other members to view.

The National Association of Realtors, meanwhile, in 2008 furthered plans to establish a national property information database that Realtors can access to view details for properties of all types, whether or not the properties are for sale.

In the Chicago area, two MLSs resolved a long-running consolidation dispute that had erupted in a lawsuit. Shareholders for Multiple Listing Service of Northern Illinois (MLSNI) and the MLS of Mount Prospect, Arlington Heights, Palatine and Prospect Heights (MAP MLS) this year voted to approve a merger, forming Midwest Real Estate Data LLC.

And two Ohio MLSs announced plans to combine property information into a single, shared database dubbed the NortheastOhio Real Estate Exchange (NEOHREX).

Brokerage giant Realogy Corp. continued to consolidate company-owned offices in 2008 — the company consolidated about 67 company-owned brokerage offices in 2007 and announced plans in March to consolidate an additional 70 company-owned office locations during the first two quarters of 2008.

In the title industry, Fidelity National Financial Inc. picked up the Colorado title insurance operations of Mercury Companies Inc. and cleared some hurdles in buying up title insurance operations from LandAmerica Financial Group, which entered into bankruptcy proceedings.
8. DOJ v. NAR settles

After a two-year federal investigation and a three-year legal battle, the U.S. Justice Department and National Association of Realtors trade group this year settled a lawsuit that had charged NAR with approving multiple listing service policies in violation of federal antitrust laws.

NAR admitted no wrongdoing in the settlement — announced in May and finalized in November — which creates a new Virtual Office Web sites policy that allows brokers to disseminate a broader range of online real estate information to consumers who register to receive the information.

National Association of Realtors officials have characterized the settlement as a bit moot because the Internet Data Exchange format (which is unaffected by the settlement) is already widely used and the new VOW policy may not gain much traction. NAR officials also were pleased with a requirement in the settlement that an MLS participant “actively endeavors” to participate in real estate transactions.

“The response to VOWs hasn’t been great because consumers can find sites throughout the Internet on which to gather information without having to register their name and contact information,” Mark Lesswing, NAR’s chief technology officer, said in a statement.

Meanwhile, some real estate tech innovators have said the settlement paves the way for some data-rich online applications that tap multiple listing service-derived information not previously accessible to consumers.

“There may be this sort of pent-up desire to innovate that will now be free to express itself in the marketplace,” real estate lawyer and consultant Brian Larson told Inman News when the proposed settlement was announced. “There is a meaningful change in the landscape now and that may be enough to open some doors to innovation.”

While the high-profile U.S. v. NAR lawsuit has concluded, there are other federal antitrust lawsuits against MLSs still pending.

On May 2, 2008, DOJ antitrust officials announced a lawsuit against a broker-operated MLS in Columbia, S.C., charging that the MLS’s rules restrict competition.

Officials at the Justice Department and the Federal Trade Commission have been watchful of MLS policies and Realtor-backed state measures that could potentially violate federal antitrust law.

A final decision is pending in an FTC antitrust lawsuit against a Michigan MLS. Lawyers for the FTC in March appealed to the full commission to reverse a December decision that vindicates Detroit-area regional MLS Realcomp II from alleged antitrust violations. Also in March, the FTC settled an antitrust complaint with Multiple Listing Service Inc., a Realtor-affiliated MLS in Wisconsin.

The Justice Department this year updated its list of states that maintain policies which are potentially anticompetitive because they restrict the ability of companies to offer real estate rebates to consumer, or mandate that real estate licensees perform a list of specific services for consumers — regardless of whether consumers want those services.

DOJ added six states with some form of minimum-service requirements to its Web site list. DOJ officials also monitored legislation proposed in Illinois this year that would restrict rebates — that bill did not pass.

Also this year, BrokersNYC, a real estate services company reached a settlement in an antitrust lawsuit filed against the Real Estate Board of New York, a powerful industry trade group not affiliated with NAR.
9. RESPA

After six years of trying, 2008 was the year the Department of Housing and Urban Development finally pushed through an update of rules governing the marketing and sale of mortgage loans and settlement services such title insurance to consumers.

HUD has estimated that the update of the 1974 Real Estate Settlement Procedures Act, or RESPA, will save consumers $700 per loan, or about $8.35 billion a year, by protecting them from bait-and-switch offers and helping them shop for a complete loan package.

Assuming the incoming Obama administration doesn’t reverse course, HUD will require lenders and settlement services providers to use new standardized loan disclosure forms and procedures by the end of the year. Those who think the new rules will give them a competitive advantage can begin following them in January (see story).

While HUD envisions potential savings for consumers, some industry groups saw increased costs, reduced profits, and the potential for industry consolidation. The industry fought many of the proposed changes, such as incentives for packaging settlement services with loans, asking HUD to focus only on improving loan disclosures (see story).

In the end, HUD’s final RESPA rule toned down incentive for packaging that were intended to create more competition between lenders and settlement services providers. But HUD remained confident that the new rule will help consumers shop around for the best deal and limit opportunities for overcharging them.

Regulators and consumer advocates have complained that, for years, many homebuyers paid too much not only for loans with junk fees or exorbitant interest rates, but for required settlement services like title insurance.

A 2007 report by the U.S. Government Accountability Office lamented consumers’ “weak position in the title insurance market,” and said regulators needed to step up oversight and enforcement to ensure price competition and prevent illegal activities.

Because consumers often don’t bother to shop around for settlement services, lenders, real estate brokers, homebuilders and title insurers have created affiliated businesses or used other techniques to steer consumers to providers of their choice. RESPA prohibits settlement service providers from paying kickbacks for customer referrals or forming “sham businesses” to share profits with companies that send business their way.

In August, real estate brokers who formed affiliated businesses with a company that sold natural hazard disclosure reports in California, Property I.D. Corp., agreed to settle a class action suit in August that alleged they violated RESPA for $39 million (see story).

In another example of how RESPA concerns can affect alliances between companies, RE/MAX International Inc. sued First American Residential Group Inc. in March after First American terminated a $600,000-a-year marketing agreement between the companies over concerns about its legality.

As long as affiliated businesses have their own staff, office, telephones and operating funds, such partnerships are a permissible way to share profits — profits that may be generated at the expense of consumers, who are sometimes charged more than what’s fair, critics say.

While the battle over RESPA was being waged, a number of Web sites and search tools positioning themselves as tools for consumers to comparison shop for mortgages and settlement services cropped up. They included TitleWizard.com and Closing.com, EnTitleDirect.com, MortgageGrader.com and FairClosingCosts.com, RateWindow and Mortgage Marvel, and RateSpeed.com.
10. Fair Housing Act and Internet law

Online classified and community site craigslist prevailed this year in a legal battle at the intersection of Internet law and the federal Fair Housing Act.

The Chicago Lawyers’ Committee for Civil Rights Under Law had filed a lawsuit against craigslist in February 2006, charging that craigslist violated the Fair Housing Act by allowing community members to post discriminatory housing ads on the site that contained language such as “no minorities” and “no children,” as examples.

The lawsuit was also closely watched by tech companies because it sought to determine whether the U.S. Communications Decency Act, passed in 1996, protected companies like craigslist from content posted by its users. The latest tech boom has seen a rise in the number of online real estate sites that feature a high volume of user-generated content via community forums and Q&A sections, as examples.

A panel of judges for the 7th Circuit U.S. Court of Appeals ruled in March 2008 that craigslist is essentially a “messenger” and not responsible for the illegal content posted by its users. That decision upheld an earlier ruling by a U.S. District Court.

The U.S. Department of Housing and Urban Development in March took up charges against a Chicago landlord related to a craigslist ad that the Chicago lawyers’ group had called out among the examples of allegedly discriminatory housing ads posted at that site.

In another case related to the Communications Decency Act and the Fair Housing Act, a federal district judge ruled in November that Roommates.com, a matching service for users who are seeking a roommate or roommates, can be held liable for Fair Housing Act violations because the site requires users to disclose information about gender, sexual orientation and family status, for example, and publishes that information for other users to see.

The Ninth Circuit Court of Appeals had already ruled that the search function at Roommate.com was “designed to steer users based on discriminatory criteria,” and an attorney for Roommates.com said the company plans to appeal the latest decision.

In early December, a bipartisan commission that includes participation by former housing secretaries Jack Kemp and Henry Cisneros reported on “severe and ongoing problems” with the HUD’s enforcement of fair-housing laws.

“Extreme levels of residential segregation” still exist decades after the Fair Housing Act was passed, the report found, and major federal housing programs may actually serve to maintain a pattern of housing segregation.

In July, the U.S. Department of Justice filed a lawsuit charging that a RE/MAX franchise and affiliated agent in Elmhurst, Ill., engaged in housing discrimination — that lawsuit followed a series of undercover tests conducted earlier this decade by people posing as home buyers on behalf of the National Fair Housing Alliance, a consortium of hundreds of nonprofit fair-housing groups. That group has filed several complaints in recent years against real estate brokerage companies, charging discrimination and racial steering.
Most Popular News Stories of 2008 (ranked by total page views):
1. Congress weighs reprieve for seller-funded gifts
2. Feds close down IndyMac Bank
3. Los Angeles Times axes real estate section
4. Help-U-Sell franchiser files for bankruptcy
5. FHA changes make housing bill a ‘mixed bag’
6. CEO: Real estate offices must shrink
7. FSBO site channels listings to Realtor.com
8. Lenders stick listing agents with REO liabilities
9. Zillow lays off 25 percent of workforce
10. Zillow gives up most brokerage licenses

Most Talked About News Stories of 2008 (ranked by total comments)
1. New franchise builds buzz around brand
2. 'MLS' name dispute lands in court
3. RateSpeed rolls out mortgage pricing tool
4. Realtors question Web site name restrictions
5. Congress weighs reprieve for seller-funded gifts
6. FSBO site channels listings to Realtor.com
7. Trulia’s Web-ranking strategies catch heat
8. News analysis: Where’s the beef in Case-Shiller attacks?
9. Realtor group questions real estate negotiation duties
10. Los Angeles Times axes real estate section