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Mortgage M&A Minute

May 2025

Quick Links

Market Snapshot

16%
Increase year-over-year in private equity involved M&A deals from Q1 2024 to Q1 2025

19.8%
Increase in housing units for sale at the end of March 2025, representing an increase of 1.33 million since March 2024
(National Association of REALTORS)

23.1%
Decrease in housing inventory available from February 2019 to the end of February 2025

Quick Numbers

6.2% and **6.7%**
Predicted end of 2025 30-year fixed rates from Fannie Mae and the Mortgage Bankers Association, respectively
(Yahoo Finance)

7.73%
Average 30-year fixed rate for the period from April 1971 and April 2025
(Freddie Mac)

6,996
Announced M&A deals in Q1 2025, the lowest number of quarterly, announced transactions in 20 years
(Ion Analytics)

Buyer’s Perspective
Navigating Mortgage M&A

By Austin Maloney and Michael Goldman

The first quarter of 2025 has drawn to a close with continued economic and political turbulence in the United States. Despite the turbulence and tariff-mania, we continue to see signs of increasing M&A activity in the mortgage space. Strategic acquisitions continue to be attractive for buyers in growth-mode looking to expand their capabilities through acquisition of new business lines or solidify their existing focus through an increased market share. It appears that buyers and sellers alike have come to grips with the stagnant interest rate environment, and parties are looking for ways to find growth or maybe to get ahead of the game and be prepared to take advantage when the market improves.

As mentioned in our February newsletter, we expect M&A volume to remain steady, if not increase, in the mortgage space due to increased comfort with the interest rate environment, margin pressures and technological innovation. While the broader M&A market has been hampered by economic uncertainty, mortgage industry participants may be more comfortable with the headwinds given the challenging environment that has persisted for the past couple of years.

Our last newsletter focused on considerations for sellers, and we now turn our attention to buyers in mortgage M&A transactions. From first time buyers to serial acquirers, the mortgage M&A process can be fraught with landmines if appropriate consideration is not given to key milestones in the transaction process.

Key Considerations for Buyers

Strategic Alignment

Buyers should be clear on their motivations for considering any acquisition and make sure that this motive is clear to their advisors and in some cases, the seller. Whether seeking scale, technology enhancement, product diversification or geographic expansion, the rationale for a transaction drives the focus of diligence and negotiation to ensure the buyer’s desired outcome is reached.

Anecdotally, we are seeing the pursuit of new technology to optimize processes and/or open up new business opportunities become a primary driver of acquisitions recently. Buyers pursuing acquisitions geared toward acquiring a technology platform will approach a deal differently than a buyer seeking to acquire a business line for financial or strategic reasons. A clear thesis that is understood by all members of a buyer’s internal and external team is crucial to making sure diligence is appropriately scoped and written agreements reflect the buyer’s rationale for the transaction. It is also helpful in making strategic decisions and prioritizing alternatives in negotiations.

Regulatory Preparedness

Just as sellers must be prepared to address concerns around change of control timing in certain states, buyers should enter acquisitions clear-eyed and with a practical view on the importance of a target's state and federal licenses. Given the difficulty in obtaining new licenses in certain states and from federal agencies, inexperienced buyers or advisors in the mortgage space may view a target holding more licenses as a positive value proposition. In some cases this may be true, but in our experience, buyers may forego acquiring certain licenses due to timing concerns or a desire to avoid interacting with certain state or federal agencies.

A buyer's existing licensing regime, if any, along with their goals for an acquired business will drive the approach to licensure. Advisors and buyer principals should seek early clarity on which of a target's licenses the buyer hopes to retain in a transaction. To the extent not all of a target's licenses are desired to continue after a transaction, buyers and sellers need to work in close alignment on the forfeiture or lapsing of these licenses, balancing a desire to meet buyer's future goals with sellers' desire to protect against a failed deal and their ability to continue to operate a business in such a case.

Due Diligence Focus Areas

Mortgage acquisitions require specialized due diligence in several key areas:

- Loan portfolio quality and repurchase exposure
- Regulatory compliance history and pending matters
- Technology infrastructure and integration capabilities
- Producer retention strategies and compensation structures

These areas are in addition to "customary" diligence that is done in almost every acquisition. This customary diligence can vary depending on the structure of a transaction (asset, equity, carve out, full business line, etc.) but typically will include a review of ownership records, material contracts, litigation history, benefits and employment issues and intellectual property ownership, among other items. Buyers and their outside advisors will want to spend time early in a process to align on responsibility for various diligence workstreams, as well as scope within each workstream. Close alignment between internal and external teams ensures an efficient and appropriately scoped process. In addition to the buy-side benefits of efficiency and completeness, alignment across workstreams can help to avoid frustrating the seller with duplicative or repetitive requests.

Seasoned deal professionals will observe that no M&A process is exactly alike, but deals are typically pursued through two primary contexts on the buy-side: a privately arranged deal between a buyer and seller or a competitive process where multiple buyers participate in a competitive (often referred to as an "auction") process for the right to purchase a target. A privately arranged deal typically, but not always, proceeds at a different cadence than a competitive deal as the leverage between buyers and sellers is more even early in the process. This dynamic can shift throughout the course of both competitive and privately arranged processes.

Common Challenges and Solutions

Timing

Acquisition timelines (from IOI/LOI stage to signing) in the mortgage space typically range from 60 to 150 days, significantly impacted by regulatory approvals and diligence processes. There is no "standard" time frame, and we have seen deals sign in a matter of days and close within 60 days and some deals take close to a year to reach signing or a year or more to get from signing to closing.

While each deal presents its own challenges, timing is always at the top of mind of seller and buyer business teams. In order to achieve the desired timing in a transaction, parties should caucus with advisors early in the process to come up with a realistic timeline that reflects the parties' ability to address diligence, document negotiation and regulatory hurdles. Experienced buyers and sellers understand that in most cases sellers are still operating a business while going through the M&A process and it can be difficult to devote 100 percent attention to the deal process while maintaining a successful business. In a competitive process, it is almost always an important consideration for sellers that buyers be able to reach closing quickly and with a high degree of certainty. An elevated purchase price is an excellent way for a buyer to distinguish itself in a competitive process but isn't worth much to a seller if there is not a clear path to closing and receipt of the purchase price.

In private deals, parties also should consider the merits of entering into a detailed LOI as opposed to a high-level term sheet. Parties who are considering a relatively straight-forward transaction with a desire to reach a quick signing may opt to sign a short, high-level term sheet that only includes the most basic economic and structuring details and provides for exclusivity and maybe a few other binding terms. In the simplest of deals where timing is key, parties may move straight into definitive documentation based on a high-level understanding of deal terms that are not even memorialized in a typical term sheet. In other instances, with complex structures or competing offers, parties may desire to enter into a more detailed LOI that covers certain terms that will be included in definitive written agreements, particularly if there are bespoke economic terms, earnouts or material conditions to the deal. A more detailed LOI process typically takes longer than a high-level term sheet but can have the benefit of ensuring that parties have alignment on deal terms before incurring significant diligence and negotiation expense.

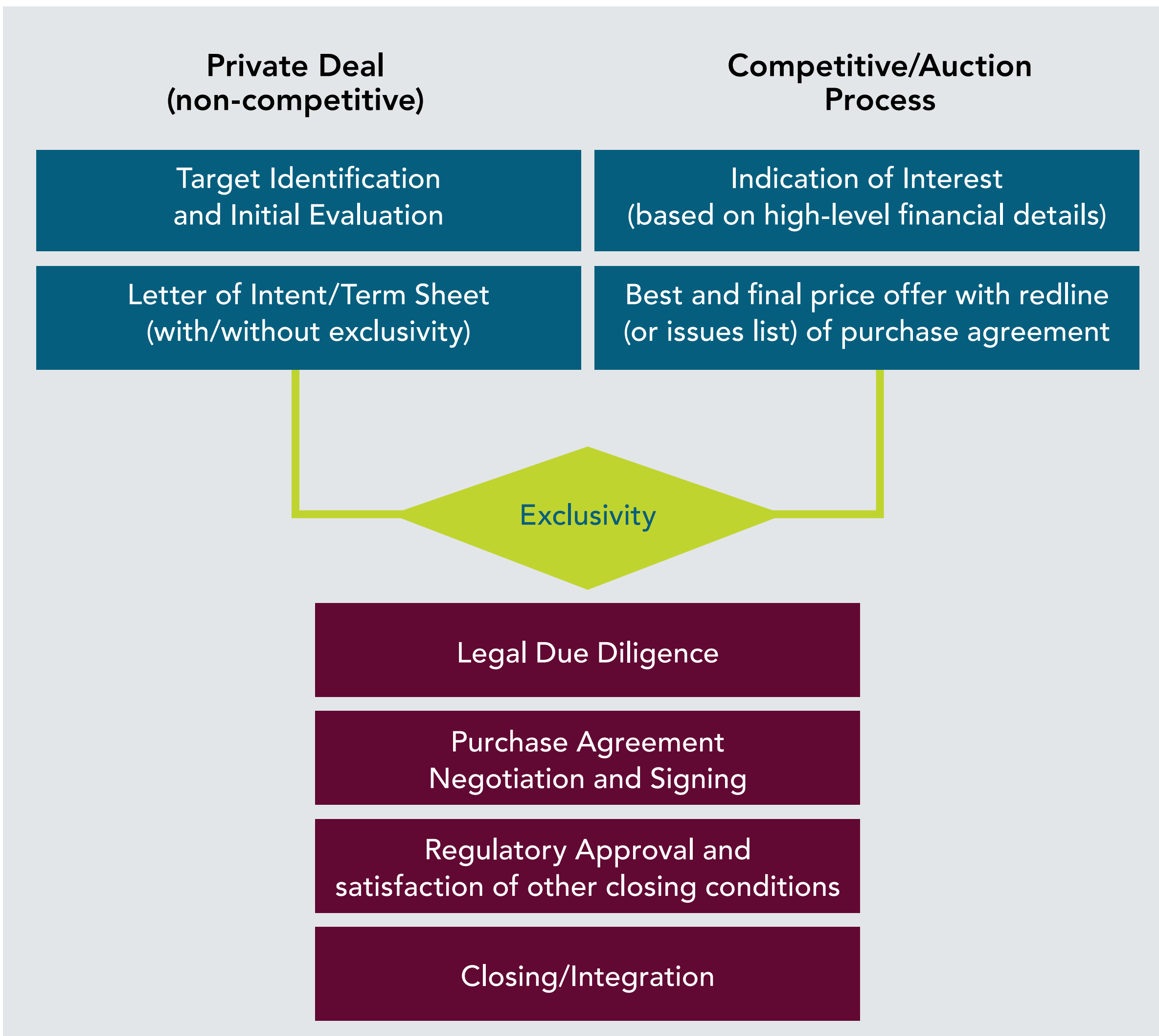
Recourse

A final area where buyers will need to be prepared to think critically is around what their recourse will be for breaches of representations and warranties along with indemnities for pre-closing liabilities of the target. Mortgage M&A is not unique in the push and pull between buyers and sellers as it relates to recourse structures but as representation and warranties insurance (RWI) has grown in prevalence in M&A transactions across the board, mortgage industry M&A participants have had to seek unique structures to fit an environment where sellers expect to retain less post-closing risk.

The prevalence of private equity sellers (who often reject post-closing recourse due to the need to close out funds) and increased use of RWI has created an M&A landscape where most sellers do not expect to retain a significant amount of responsibility (or in many cases, any responsibility) for prior liabilities upon an exit. They are expecting buyers to reflect this in their price and rely on insurance where possible. In a competitive process, buyers may feel compelled to take a less aggressive position on indemnity in order to distinguish their bid. The desire to move forward in a process must be weighed against the reality of the risk that a buyer will assume if the deal goes forward on the terms proposed. Of course, it is typically frowned upon for a buyer to "retrade" key deal terms that they offered earlier in a process, absent material changes in target performance or material liabilities uncovered in further diligence.

The shift away from significant seller retention of liability after closing has added a layer of complexity to mortgage M&A transactions as RWI insurers have been reluctant to provide coverage for loan level representations and repurchase liabilities. Typically, sellers will make representations regarding their underwriting, approval and origination processes that buyers rely on to confirm the target's compliance with law and investor guidelines. Evaluating compliance with these regulations can be time consuming and expensive. For this reason, we have yet to see a RWI insurer provide fulsome coverage around these representations though the market appears to be providing some solutions. While the RWI market may eventually find a solution for mortgage industry M&A participants, buyers often look at a target's repurchase history (and any balance sheet reserve) to determine the quantum of risk associated with repurchases and may determine the size of a holdback or escrow on this basis. Of course, other specific liabilities may be dealt with through an escrow or holdback as well. Our Spotlight interview that follows provides even more information on the RWI product and process. There is no one-size fits all approach to recourse structures in mortgage M&A transactions, but it is important that buyers have a clear understanding of what risks may be subject to coverage in a transaction along with those pre-closing liabilities for which they may be responsible for due to a lack of indemnification coverage.

The Acquisition Process



Interview with

Sumit Agarwal
Senior Vice President, M&A

Philip Chauncey
Vice President

Q&A Minute
Marsh McLennan Agency

Q **Can you give our readers a bit of background on the purpose of rep and warranty insurance and why it is a valuable tool for both buyers and sellers in the M&A process?**

A The purpose of Representation and Warranty Insurance (RWI) is to provide protection against financial losses arising from breaches of reps and warranties in an M&A transaction, helping both buyer and seller. Depending on the specifics of a given transaction, sellers like to utilize this product since it (i) limits their financial exposure to indemnity claims on a transaction, (ii) allows them to "walk-away" clean after the deal by eliminating or limiting the need for an escrow or any potential hold-back amounts, and (iii) helps preserve business relationships should seller continue to work for the company post-close, since it provides buyer an alternate avenue to recover for any unknown losses. For similar reasons, buyers like to utilize this product in a transaction since it (i) affords them alternate and additional protection beyond any protection afforded to them in the purchase agreement for indemnity claims and (ii) protects them against an insolvent seller while providing numerous other benefits.

Q **What are some of the key features of the RWI product—premium, retention/deductible, underwriting fee, etc.?**

A RWI insures company and seller representations and warranties in a purchase agreement. The policy covers "general presentations" for three years and "fundamental" and Tax Representations for six years. In today's market, in early Q2 of 2025, the market is still soft given the amount of uncertainty in the M&A industry because of geopolitical considerations. That said, rates have climbed minimally since the 2024 lows, to around 2.8–2.9 percent rate-on-line (e.g. cents per dollar of coverage) for deals in the $100 million to $250 million enterprise value range, and can be about 20 to 30 basis points lower for deals under $100 million enterprise value and deals in the $250 million to $1 billion enterprise value range. Retentions (deductibles) have historically been 1 percent of enterprise value dropping to 0.5 percent of enterprise value at one year but 2024 saw these numbers decrease as another competitive factor among insurers. Average initial retentions are now between 0.4–0.6 percent for most deals with little to no dropdown from there until you cross $500 million enterprise value range, at which point the retention can drop to 0.3–0.4 percent of enterprise value.

Q How has the market evolved since RWI was introduced to the market in the 2010s?

A Generally speaking, the RWI market has evolved in almost every way since the 2010s since data is now available for the last 10 to 15 years. From rates, exclusions, underwriting processes and industry verticals to evolution of the use of the product itself, data from the last decade has allowed the product to mature in more ways than one. Its use has now expanded to secondaries transactions, a variety of tax considerations and contingent liability. Assuming market factors allow, insurers now know how to price these policies, they have claims data to know how to adjust their approach to underwriting, and also how to continue to grow and pivot to account for changes in the market, such as COVID-19, tariff considerations and general market volatility.

Q What role does Marsh, as broker, play in the RWI process?

A As the RWI broker on these transactions, Marsh is able to utilize its expertise and experience in the market to find the best possible RWI solution on a given deal. Being the number one broker in the space by total underwritten premium, we have strong relationships with each of our insurer partners and understand their appetite, strengths and weaknesses. This allows us to approach particular insurers on particular deals, taking into account (i) deal size, (ii) nature of the target's operations, and (iii) identity of the parties involved. Rather than approaching 30+ insurers on each deal, we utilize our industry knowledge to find the best comprehensive solution for each of our clients, allowing us to achieve best-in-market terms. And our responsibilities do not stop with just placing the policy, but also providing the client end-to-end support, such as in the event of a claim. Given our position in the market, our dedicated claims team helps advocate for our clients in a claims scenario to help facilitate the process with the insurer and insured, all to find the best possible solution.

Q What are the biggest objections to using RWI that you hear from dealmakers and how do you respond to their hesitation?

A For clients who have used the product, they generally have come to understand how the product works, its utility and how the underwriting process works on a transaction. However, for first-time buyers of RWI or buyers who do not use it frequently, it can be a challenging process. Sometimes, they do not fully understand—or misunderstand—the scope of the policy and how it is intended to be used. For example, some believe it to be a "catch-all" policy, meant to cover everything, including down-side business risk—which is not what the product is meant to cover. Additionally, the process can be cumbersome on a fast-paced deal, where a significant portion of the RWI process does not start until most of the diligence is completed—at which point parties are ready to sign but then have to go through the RWI underwriting process. While we help the client navigate this by setting expectations, it can be stressful to some buyers who are up against tight deadlines or competitive processes where time is of the essence. And then for others, there can be pricing considerations since it's not just the cost of the policy that one needs to take into account but also ensuring all your third-party advisors are preparing full-scope written diligence reports, which—generally speaking—should be prepared by reputable third-party advisors.

Q One of the challenges that our mortgage clients have faced is the ability to get coverage for "loan level" reps and loan repurchase risk. Have you seen any softening of the market to cover such risk?

A Trying to obtain coverage for these types of representations goes back to evolution of the product over the last 10 to 15 years, whereby insurers now have the experience to know what will or will not fall within their appetite and what they are willing to explore as a new possibility. That said, with respect to loan level reps and repurchase risk—there is certainly room to shop this in the marketplace and see if insurers are willing to insure a particular representation—depending on the scope of said representation and the diligence being conducted around said representation. Generally speaking, on deals in this industry, there are exclusions relating to (i) the collectability and/or valuation of the loan portfolio, (ii) inadequacy of repurchase reserves, (iii) loan valuation, loan performance or loan losses, etc. However, if a buyer were to hire one of the handful of diligence providers with expertise in the space and conduct adequate, full-scope diligence, my assumption is we would be able to find an insurer willing to provide some coverage—all depending on the scope of the representations being insured. As is always the case, anything forward looking or "off-market" would not be covered, but if the representation were to be drafted in such a way where a third-party advisor is able to diligence the same and confirm its accuracy, an insurer may be comfortable insuring the same.

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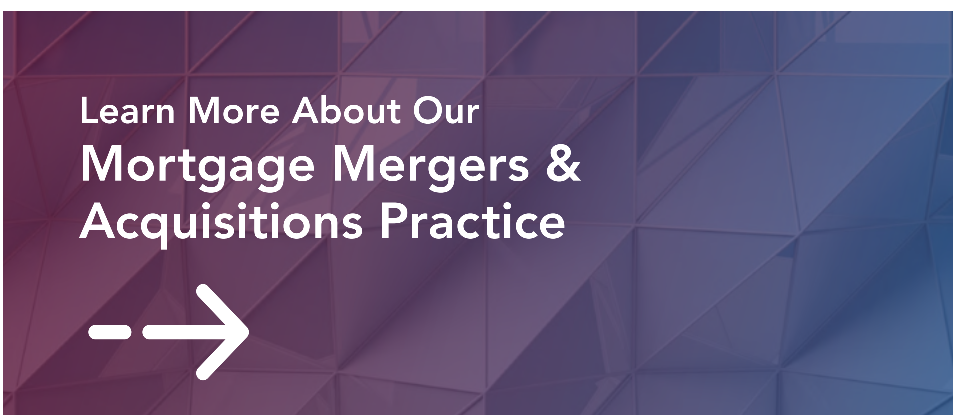
Hunton is proud to be one of the top, fully integrated and multidisciplinary legal platforms in the US for advising companies in the mortgage and financial services industry on transactional matters. We are—and have been for decades—at the forefront of advising mortgage companies and other financial services entities on mergers and acquisitions.

The collective experience of our mortgage industry M&A lawyers enables us to address the needs of mortgage companies on a holistic basis. We help senior business leaders negotiate the increasingly complex M&A path, and we collaborate across the firm with our top-tier warehouse financing, MSR/loan transfer, and securitization colleagues.

We pride ourselves on our institutional relationships with longstanding clients. Our overall approach to mortgage industry M&A transactions focuses on: responsiveness to clients; seamless integration with client business and legal teams; creative, practical solutions; commonsense approaches; and, most important, completing transactions consistent with our clients' strategic goals.



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