



# Carolina Update

*NCLTA's Exclusive Report to its Members*

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## President's Message

*by Nancy Short Ferguson*



This edition of the newsletter is so full of information, I am opting to devote these valuable pages to "meat and potatoes" – enlightenment rather than inspiration. We have an update on the status of our continuing controversy over mortgage impairment products, a new IRS form requirement, Property Records Industry Joint Task Force information, mixed results from a *very long* legislative session and, even as the ink is drying on the session just ended, suggestions for new legislative proposals for the 2002 Short Session or the 2003-2004 Full Session.

### ALTA Annual Convention

The American Land Title Annual Convention (ALTA) was energizing, informative, jam-packed with information and attended by a large crowd of interesting people. As many a President has said before, I highly recommend that you attend if you can! It was a very dramatic and extraordinary event, given the timing, the economy, and the dramatic changes in our industry. The timing was less than a month after 9-11 and only two days after an attempted highjacking on the same flight path many of us took – from Chicago to LA. The economy has sent ALTA, like so many others, reeling. ALTA had been functioning in large part out of income generated by investments, rather than membership revenues. Now they are considering other more creative options for

revenue generation, other than increasing dues. The dramatic changes range from HUD Secretary Martinez's pro-active stance on flipping, yield spread premiums, and RESPA reform to the massive national marketing of mortgage impairment products.

Breakout group topics ranged from human resources, check fraud, expanded coverage policies, 1031 exchanges, marketing, affiliated businesses, e-commerce and, yes, "County Recorders and The Title Industry" (House Bill 1073, on a national scale). ALTA is filing an *amicus* brief regarding the Washington equitable subrogation case. ALTA is also very actively involved in its objections to the new onslaught of mortgage impairment products.

The highlight for me was the presentation by guest speaker Norman Flynn, former president of the National Association of Realtors, who spoke of his travels in and work with emerging nations trying to develop reliable systems of real estate ownership. These emerging nations are capital rich (land) but liquidity poor. Citizens and governments cannot verify legal ownership. People are subjected to up to 20-year waits and massive bureaucracies as they "establish title" (during which governments may change or records disappear). Thus, they cannot build permanent improvements, develop investor vehicles (corporations or partnerships) to build and operate modern factories, obtain loans for working capital, or otherwise modernize their economies. They cannot capitalize on what capitalism

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## President's Message

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has to offer! Flynn recommended the book by Hernando de Soto (the economist, not the explorer), *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, which I promptly located and read with a vengeance, given the complete failure of cultural link we were experiencing in Afghanistan. Flynn reiterated, repeatedly, how critical it is for all of us to be involved in helping other countries – with our skills, our knowledge, our creativity. And, most importantly, he cautioned that this can be done only by sanctioning existing unofficial systems, not trying to impose an outside system foreign to, and not understood by, the people of the country. Reinforcing the tremendous importance of Flynn and de Soto's words: The dust jacket of the book, published in 2000, contains a photograph of the World Trade Center towers under a bell jar.

## North Carolina Issues

Back to North Carolina: **2002 is the 25th Anniversary of the North Carolina Land Title Association!** It is a time to reflect upon all of the Association's many (often un-noticed) contributions to our industry over its 25-year history. The Executive Committee and staff will be looking back at our history to develop a program for our August 2002 convention. So, for those of you who have been involved over the past 25 years, let us know: **What do you think have been the most important issues faced by our industry, the highest or most useful hurdles addressed with our Association's joint effort (even where we did not attain 100% success), and the critical parties who have led this Association's efforts over its 25-year history?** We would like to recognize these many achievements and publicize them to those of our membership who may not have been as long or as heavily involved.

This is OUR Association – yours and mine. And NCLTA is here to assist all of us with OUR industry's needs – from state-wide ALTA form filings to legislative proposals to communications about practical developments for OUR customers.

COMMUNICATE, BE HERE, PARTICIPATE!

OUR BOARD NEEDS YOUR INPUT IN ORDER TO REPRESENT YOU IN THE BEST POSSIBLE WAY!

## Mortgage Impairment

This battle was by far the hottest topic for 2001 and beyond in the title insurance industry. If you have not done your basic Mortgage Impairment 101 reading, *you need to do so now – and to start talking with your customers, your company management, and NCLTA about it!* In this highly competitive mortgage market, lenders are worried about only two things: (1) speed and (2) cost. And the two are inextricably intertwined. Every minute or hour or day of delay caused by a slow appraisal or title work may cost them the loan or may lose the loan to a mortgage broker, increasing the cost by not just hundreds but thousands of dollars. They see the title industry as inflexible, uncreative, unwilling to respond to the needs of the times and, therefore, getting our just desserts in being cut out of the "lucrative" A-credit refinance and equity line business.

Thus, enter the P&C and PMI insurers, willing to issue an "enhancement" endorsement or even a pool policy that protects the lender from loss due to "undisclosed liens." ALTA and the national underwriters call this title insurance, insisting these companies must comply with title insurance laws, including title searches, attorney certifications in North Carolina, and monoline provisions in many states. These mortgage impairment product insurers call it a credit risk, insisting that either they do not need a title search or that a simple owner and lien search (not complying with G.S. 58-26) is all that they need. In fact, the products are difficult to identify from these companies' filings with the respective Departments of Insurance as they are often referring to them as "enhancements" only and refusing to file the forms or they are filing rates and not forms under "surplus lines" provisions. And of course many of the names used for these products are not self-evident because they are not labeled as "title" coverage.

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## President's Message

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ALTA has filed suit against Radian Guaranty, the most prominent aggressive insurer, in California. ALTA and local land title associations are seeking either disapprovals or cease-and-desist orders from the Departments of Insurance in many states. Several states have affirmatively disapproved of the product, including Florida where Radian first filed for an administrative hearing to show cause why the product was not approved, then withdrew the filing altogether on grounds they already had an approved product. The NAIC Working Group on title insurance is considering adding mortgage impairment to its title insurance agenda which already includes creditors' rights coverage. However, this will not be considered until March 2002 solely for addition to its agenda; actual consideration of the issue would be come later.

The stakes are very high for both the unwitting and uninformed consumers who believe they are getting a really good deal and for our entire economy which is dependent upon reliable public title records systems and which will be operated without the safeguards underlying our title insurance statutes.

**DO YOUR HOMEWORK!** Your livelihood and the livelihoods of your customer-attorneys may very well be at stake in this new market! Check out the ALTA web site, [www.alta.org](http://www.alta.org); stay tuned to the Real Property Section list service (and review the archives if you have not already joined), <http://lists.ncbar.org/archives/property.html>; read your alerts from the NCLTA; talk to your fellow title insurers; and communicate this high-risk situation to your customers! They deserve to know and you may be their best educator!

### Legislative Activities by NCLTA officers and members

- House Bill 253, regarding Manufactured and Mobile Homes, passed in a more streamlined, simplified version. DMV is expeditiously working to develop a form MVT-46G, Affidavit for Removal of Manufactured Home from Vehicle Registration Files. We must now consider and decide

whether NCLTA would like to draft and adopt a "standardized" form Declaration of Intent to Affix the Manufactured Home to Real Property for situations where no DMV title will be issued or it has been canceled, or whether the Real Property Section should do so, or whether we should all be left to our own (and our attorneys') devices. We are also looking carefully at the issues that arise, preparing for the potential need for technical corrections. See the act, in its entirety, at <http://www.ncga.state.nc.us/html2001/bills/AllVersions/House/H253vr.html>.

- Senate Bill 461, <http://www.ncga.state.nc.us/html2001/bills/AllVersions/Senate/S461vc.html>. Through the diligent lobbying efforts of Don Lampe, S461 exempted title insurance companies from the annual notice requirements of the Gramm-Leach-Bliley Act. However, it did not cover the potential privacy violation of our distributing prior policies without consent of the consumer. At the request of the NCLTA Executive Committee, the Real Property Section is considering a revision to the Offer to Purchase and Contract, by which the seller would authorize release

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## NCLTA Web Site Updates

The association's web site, <http://www.nclta.org>, has been consistently receiving an average of 300 visits per month. Recent updates and additions to the site include

- the Uniform Surveyor's Report Form,
- links with bills ratified by the Legislature,
- 2002 membership applications, and
- IRS Form 8821 for obtaining information on federal tax liens.

If you have suggestions for improving the web site or find that some part of the site is not working properly, please let us know at [info@nclta.org](mailto:info@nclta.org).

# October executive committee meeting focuses on finances and federal issues

During its October 23 meeting, the NC Land Title Association executive committee approved a 2002 operating budget and continuation of dues rates at the same level as 2001. To counteract mounting printing and mailing costs, the executive committee approved electronic publication of the 2002-2003 *Directory of Members* in lieu of a printed version.

President Nancy Ferguson presented a written and verbal report of activities and issues arising during the American Land Title Association annual convention (see "President's Message"), including mortgage impairment products, proposed HUD regulations regarding "flipping," and newly approved ALTA forms (see related article on page 5). Ferguson also reported that there is a national joint task force to standardize document formats for all records—Property Records Industry Joint Task Force (<http://www.prijtf.org/taskforce>).

Lauren Copan presented the results of the surveys on potential convention sites for 2004. The two properties receiving the most votes were the Boars Head Inn and the Homestead, both in the Virginia mountains. There was also a desire to switch the convention date to September for 2004. Proposals from both sites are in the process of being negotiated as quoted rates were substantially higher than NCLTA's usual rates due to the peak foliage season demand.

2002 Convention Chair Chris Burti solicited speaker and topic ideas for the convention program at the Sheraton Atlantic Beach, August 8-10. Since 2002 will mark the 25th anniversary of the founding of the association, special activities to celebrate the occasion are being considered. In addition, alternative activities for non-golfers are being explored.

The executive committee determined the donation amounts for joint sponsorship of the Real Property Section 2002 annual convention. Requests for donations were sent to the main representatives of each title company in late 2001 and payments are due February 15.

A representative from Morgan Stanley made a presentation on association investment policies and explained various investment options available for non-profit organizations.

The status of various state legislative initiatives was reviewed, including HB253 (Certain Manufactured Housing Real Property) and S461 (Privacy Act). The 2002 legislative agenda was considered for submission to the NC Bar Association.

The next scheduled meeting of the executive committee will take place on Tuesday, February 12, 2002, at the association's headquarters in Raleigh.

## Welcome New Members

The NCLTA executive committee approved the following new members during its October 23 meeting.

### Agency Member

**North Carolina Land Title, LLC (A)**

**Todd Jackson**

504 Autumn Spring Ct., #26

Franklin, TN 37067

(615) 771-0044 • (877) 791-3802

FAX (615) 771-2022 • FAX (877) 791-3803

### Attorney Member

**Mark A. Whitson**

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## IRS requiring Form 8821 to get payoff information on Federal Tax Liens

The Internal Revenue Service has changed the procedure that must be followed to request disclosure of outstanding amounts due on federal tax liens. The IRS is standardizing this procedure nationwide to better ensure taxpayer privacy. Before the IRS can release tax information to anyone, it must receive Form 8821, Tax Information Authorization, signed by the taxpayer, authorizing the IRS to disclose the amount of all Federal taxes due.

The agency anticipates that this change will improve its service by clearly identifying the information the taxpayer has authorized requesters to receive, reducing the need for multiple contacts with the IRS office, and reducing the processing time for requests.

A copy of the Form 8821 may be downloaded by accessing this link, <http://ftp.fedworld.gov/pub/irs-pdf/f8821.pdf>.

Please note:

- Instructions are on the back of the form
- Faxed copies of the form are acceptable
- The taxpayer(s) must sign the form and the IRS must receive it within 60 days of their dated signature (Reg. 301.6103(b)(2))
- Once the IRS receives Form 8821, it can generally update payoff information without a new Form 8821
- Additional Forms 8821 may be ordered by calling the IRS toll-free forms line on 1-800-829-3676 or you may download the form from the IRS Digital Daily @ [www.irs.gov](http://www.irs.gov) <<http://www.irs.gov>>.

The IRS appreciates your cooperation, and apologizes if this procedural change causes any temporary inconvenience. You may fax your request for a lien payoff, along with Form 8821, to the North/South Carolina Lien Unit at (336) 378-2316. If you have any questions, please contact the North/South Carolina Lien Hotline at (336) 378-2090. You may also contact Nancy Scott in the North/South Carolina Tax Lien Unit on (336) 378-2085.

## Reminder...

Annual dues renewals for 2002 were mailed to members in November and December. Membership renewals are due December 31, 2001. If you did not receive your renewal, have questions, or need another copy, please contact the NCLTA staff at 919/787-5181. You may also email [lcopan@olsonmgmt.com](mailto:lcopan@olsonmgmt.com) or [pdepas@olsonmgmt.com](mailto:pdepas@olsonmgmt.com).

Changed your email address? Changes in staff at your office? Moving? New area code? New zip code? Please include the NCLTA headquarters office in notifications about these types of changes. We endeavor to keep costs down, but trying to track down correct address and email information takes extra time and money...dues dollars that could be better spent providing member services.

## New ALTA Forms Filed with Department of Insurance

On October 13, 2001, the American Land Title Association (ALTA) board of governors approved an Expanded Coverage Residential Loan Policy and two endorsements—ALTA Endorsement Forms 13 and 13.1, Leasehold Owners and Leasehold Loan, respectively. These forms, along with all other ALTA forms (a few not previously submitted) were filed with the North Carolina Department of Insurance by NCLTA and approval received for use of these forms, effective on or after October 18, 2001, for the older forms and effective on or after October 24, 2001, for the three new ALTA forms dated October 13. The three newest forms are available from the ALTA web site under “New Forms Approved at ALTA Convention” at <http://www.alta.org>.

## President's Message

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by the title company of any prior policies and surveys of the seller.

- Through action by several NCLTA officers, in conjunction with the Real Property Section, House Bill 716, <http://www.ncga.state.nc.us/html2001/bills/AllVersions/House/H716v2.html>, was held up from passage this Session pending further review and clarification. This bill would have modified (some say clarified, others say substantially amended) existing legal interpretations of G.S. 28A-15-1(c), G.S. 28A-15-2, G.S. 28A-17-8, G.S. 28A-17-8.1, 28A-17-10 and Montgomery v. Hinton.
- House Bill 1073 passed the legislature, requiring new formatting requirements or payment of a \$25.00 penalty for non-

compliant documents being recorded on or after July 1, 2002. This statutory amendment is part of a nationwide organized movement toward electronic records storage and access, spearheaded by the Property Records Industry Joint Task Force, [www.prijtf.org/taskforce](http://www.prijtf.org/taskforce), of which only two North Carolinians are members – Ann Shaw, the Register of Deeds for Randolph County, and Judy Gibson, the Register of Deeds for Mecklenburg County. In other states, the real property bar has been actively involved. Members should check with their respective companies to learn if we have active participants who would share information with us. Otherwise, we may

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## Convention Calendar

### **ALTA Tech Forum 2002**

February 17-19, 2002  
The Fairmont  
New Orleans, LA

### **ALTA 2002 Federal Conference**

May 5-7, 2002  
Grand Hyatt  
Washington, DC

### **NCBA Real Property Section 2002 Annual Convention**

April 19-20, 2002  
Grove Park Inn  
Asheville, NC

### **NCLTA 2002 Annual Convention**

August 8-10, 2002  
Sheraton Atlantic Beach  
Atlantic Beach, NC

<http://www.sheratonatlanticbeach.com>

<http://www.sunnync.com>

### **ALTA 2002 Annual Convention**

October 16-19, 2002  
The Breakers  
Palm Beach, FL

### **NCBA Real Property Section 2003 Annual Convention**

May 2-3, 2003  
Kiawah Island Resort  
Kiawah Island, SC

### **NCLTA 2003 Annual Convention**

August 7-9, 2003  
Williamsburg Lodge  
Williamsburg, VA

<http://www.colonialwilliamsburg.org>

### **ALTA 2003 Annual Convention**

October 22-25, 2003  
Arizona Biltmore Resort & Spa  
Phoenix, AZ

### **ALTA 2004 Annual Convention**

October 6-9, 2004  
The Westin Copley Place  
Boston, MA



need to consider joining as an associate member and sponsoring participation.

- S912, adding new G.S. 44A-12.1, <http://www.ncga.state.nc.us/html2001/bills/AllVersions/Senate/S912vr.html>, allows the Clerk of Superior Court discretion in not indexing non-compliant claims of lien as well as providing for criminal penalty as a Class 1 misdemeanor for certain improper filings.

### Upcoming Legislative Agenda – Proposals:

All members are encouraged to submit any particular legislative issues, or even rough drafts of proposed solutions, for consideration by the NCLTA Executive Committee. The 2002 Short Session begins in May and NOW is the time to organize and prepare the groundwork for any proposals. NCLTA did not specifically retain a lobbyist this year. However, should the need arise, the issue can be reconsidered for special circumstances. The following are issues already proposed for consideration. We will appreciate your feedback, comments, suggestions and proposals.

- Mortgage cancellation by closing attorney: Through the list service of ALTA, a multitude of mortgage cancellation statutes and proposals have been garnered from all over the country (including the political debates underlying their passage or failure). These will be provided to the Real Property Section Legislative committee for consideration in drafting a new proposal for North Carolina.
- Mortgage cancellation penalties for lenders who either do not fund or are paid – increase to \$2,500, affect their registration and ability to do business in NC, include as predatory lending (if they record and do not fund)
- Increase prepayment penalty prohibition maximum loan amount from \$125,000, which is an outdated amount
- “Reasonable time” requirement to provide tax statement by tax office under G.S. 105-361
- Simultaneous recording: Presumption of priority based on order of recording, rather than co-parity if at same time
- Construction Law Section is actively pursuing substantial amendment to Chapter 44A. Per Ed Urban, who is monitoring the situation, this includes a review of the 1993-1994 work product of the General Statutes Commission’s Drafting Committee, without changing relation back. We do not have the political power to change this given that lenders have no vested interest in supporting the change; we cover their losses.
- Future Advances statute: Clarification of “advance” versus novation (“dragnet” clauses); extend or delete 15-year advance requirement in recognition of current line of credit and other bond financing significantly exceeding this limitation; deletion of current outstanding amount requirement.
- Subordination Agreement requirements, in light of MCB Ltd. Case
- Equitable subrogation sanctioned
- Clarification of parameters of clerical or scrivener’s error statute, G.S. 47-36.1
- Foreclosure – address constitutional issues regarding notice to junior lienors absent request for notice
- Ad valorem tax sales not extinguish restrictions, easements appurtenant to other properties
- Clarify amendment of restriction provisions under UCA and PCA
- Easement of Necessity – modeling Florida statute
- Modify Withdrawal from dedication under G.S. 136-96
- Modify G.S. 29-30, as suggested by Pat Hetrick at the NCLTA Convention
- Clarification of G.S. 30-3.1 through 30-3.6
- Modification of G.S. 45-81(c) in light of Raintree case