



# Carolina Update

*NCLTA's Exclusive Report to its Members*

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## President's message

**Bryan D. Rosenberg**



In this, my final "President's Message," I wanted to advise the membership of the upcoming meeting we are having with Commissioner Long and his staff. This sort of meeting was

reinitiated last year in an attempt to re-establish an on-going dialogue. This dialogue, which would hopefully be continued annually, is a way of meeting to discuss all sorts of talking points instead of just being reactionary and trying to meet with the Department of Insurance when things are not going well, and we want them to take some sort of action on our behalf. The thinking was "could we create a dialogue where we would have the opportunity to help the Department further their objectives instead of always meeting with them to ask them to do something for us"? We have such a meeting scheduled for August 31<sup>st</sup> and have submitted a proposed agenda. I would like to share that agenda with you by quoting it extensively as submitted. The agenda reads as follows:

"As President of the North Carolina Land Title Association, I want to express our appreciation for the upcoming meeting and the opportunity to speak with the Commissioner and others on the staff at the Department. We are promoting these meetings to encourage a more open dialogue between our industry and the Department and appreciate your willingness to meet with us.

"At our last Executive Committee meeting, we formulated some topics that we are interested in discussing. Below are the topics and brief outlines for each point.

- **Florida statute regarding sharing of information.** The State of Florida has a statute on its books that allows for the sharing of information between insurance companies relevant to detecting patterns of claimants. This sharing of information is intended to help reduce fraud by claimants thereby benefiting legitimate consumers by reducing rates over the long term and improving the image of the insurance industry by showing there is cooperation by the insurance companies in catching fraudulent claimants. In the title industry in particular, we would like to be able to share information on builders who are signing fraudulent lien waivers, and we would like to share information relevant to detecting attorneys who are diverting trust funds of consumers related to real estate closings. The discussion at our meeting is for the purpose of determining if Florida's approach would work in North Carolina and whether it requires any statutory changes. We would support such legislation and could take a leadership role in introducing the concept to other lines of insurance in North Carolina.
- **Title Agent licensing exam.** We would like to discuss the current exam taken to become a licensed title agent. After

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# National Electronic Recording and Mortgage Satisfaction Acts approved

By Nancy Short Ferguson, NCLTA Liaison to NCCUSL and URPERA Advisory Council

**Carolina Update** is the official publication of the North Carolina Land Title Association. It is distributed quarterly to title insurance company members, attorney members, and other persons interested in the title insurance industry. Readers are encouraged to submit articles to the newsletter. The opinions and statements of guest writers do not necessarily reflect the policies or opinions of NCLTA.

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NCCUSL adopted the **Uniform Real Property Electronic Recording Act (URPERA)** at its Convention during the first week in August. The version submitted at the Convention is on-line at: [www.law.upenn.edu/bll/ulc/urpera/URPERA2004AnnMtgDraft.htm](http://www.law.upenn.edu/bll/ulc/urpera/URPERA2004AnnMtgDraft.htm)

It was modified somewhat at the Convention, especially regarding the local state's standards approval process (Sections 5 and 6) and will be reviewed by the NCCUSL Style committee, but it stands otherwise substantially as published.

Subsequently, the North Carolina Secretary of State's Advisory Council on URPERA met Tuesday, August 10, 2004, in Raleigh, with introductory information from various sources. The goals of the Secretary of State in appointing the Advisory Council are to gain as much information as possible given the short lead time and to avoid crisis at the time of implementation (as had happened in several states at the time of implementation of electronic UCC filings). Also, the Legislature convenes January 26 with reports of the Secretary and General Statutes Commission due then pursuant to S1152 from the 2004 General Session. Important considerations for the Advisory Committee are:

- Economic interests
- Archival – indexing and maintenance of records
- Security and confidence in e-notarization
- Public access to e-records
- Potential need for pilot activities

Further meetings are scheduled 11:00 to 5:00 on August 24, September 7, and September 21. (Please note: These are open meetings and anyone can attend, but to assure adequate space and seating, interested parties should call Patty Holloway of the office of the Secretary of State ahead of time.)

When forming this Advisory Council, the Secretary of State invited several organizations, including NCLTA, to provide names of

three nominees (volunteers)—one each from high, medium and low population areas, from which the Secretary of State chose one. Presumably this was to assure that all groups and all sizes of geographic areas were represented. I was the nominee from the geographical group assigned to NCLTA.

So, in order for me to be most effective in this role, please submit any thoughts or comments you wish presented to the Advisory Council regarding application of this statute in North Carolina to me, and I will be happy to share or follow up on them.

Meanwhile, the **Uniform Residential Mortgage Satisfaction Act** was approved by a unanimous vote of NCCUSL on Thursday, August 5. The version considered at the Convention is online at: [www.law.upenn.edu/bll/ulc/umsa/2004AnnMtgDraft.htm](http://www.law.upenn.edu/bll/ulc/umsa/2004AnnMtgDraft.htm).

During the next few weeks, any necessary style changes will be reconciled, according to a report from Wilson Freyermuth, the Reporter for the NCCUSL UMSA Committee. In addition, a few changes to the Act were addressed from the floor and will be drafted into the final version:

1. There were several negative comments from the floor regarding the exclusive use of certified mail for certain of the notifications (the 30-day no satisfaction pre-statutory damage notification and the 30-day notification of intent to file a self-help affidavit of satisfaction). Based upon these comments, the Committee revised these Provisions regarding certified mail delivery of 30-day notifications to expand them to include methods that (a) are authorized by Section 103 AND (b) provide proof of receipt, such as Federal Express. However, the requirement that the notification be provided by a method that is authorized by Section 103 would prevent such a notification from being provided electronically

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# Zurich offering mortgage impairment product

Zurich North American Financial Enterprises ("Zurich") is marketing a Mortgage Impairment Policy through its web site. According to information published on such web site, the "Zurich North American Financial Enterprises' Mortgagee Protection Policy is designed for lending institutions that are engaged in granting primary residential and small commercial mortgages." Such policies provide coverage for "[r]eal estate taxes including special taxes and municipal assessment." In addition, such policies provide coverage for loss due to "[c]ustodial errors and accidental omissions, title errors and accidental omissions, and recordation errors and accidental omissions. According to the information published by Zurich about its Mortgage Impairment Policy, such product is being marketed to "Commercial Banks, Savings Banks, Bank Holding Companies, Credit Unions, Foreign Banks" and "[a]ll sizes of financial services firms." To view information promulgated by Zurich relative such Mortgage Impairment Product, one can go to [www.zurich.com](http://www.zurich.com).

According to the North Carolina Department of Insurance, Mortgage Impairment Policies like those described on the Zurich web site may constitute title insurance.

According to a bulletin published by the North Carolina Department of Insurance on April 17, 2002, "any product that, in essence, insures against loss by reason of defective title or incorrect title searches is title insurance, regardless of the semantics employed." As such the insurers of such Mortgage Impairment Policies must be licensed under Article 26 of Chapter 58 of the North Carolina General Statutes. Therefore, if the Zurich Mortgage Impairment Policy is being offered to Lenders securing loans in North Carolina, such might violate Chapter 58 of the North Carolina General Statutes unless Zurich has been licensed as a title insurer with the North Carolina Department of Insurance. The issuance of title insurance policies without the insurer being licensed by the Department of Insurance will be viewed by such department as being "grossly improper and will subject such [insurers] to administrative action by" the North Carolina Department of Insurance.

If you have information that Zurich is issuing these Mortgage Impairment Policies in North Carolina, you are encouraged to contact the North Carolina Department of Insurance.

## Convention calendar

**NCLTA 2004  
Annual Convention**  
September 16-18, 2004  
The Boar's Head Inn  
Charlottesville, VA

[www.nclta.org/  
convention.html](http://www.nclta.org/convention.html)

[www.boarsheadinn.com](http://www.boarsheadinn.com)

**ALTA 2004  
Annual Convention**  
October 6-9, 2004  
The Westin Copley Place  
Boston, MA

[www.alta.org/educ/  
cnvntn/index.htm](http://www.alta.org/educ/cnvntn/index.htm)

**NCLTA 2005  
Annual Convention**  
September 15-17, 2005  
The Grove Park Inn  
Asheville, NC

[www.groveparkinn.com](http://www.groveparkinn.com)

**NCLTA 2006  
Annual Convention**  
September 14-16, 2006  
Wild Dunes Resort  
Isle of Palms, SC

[www.wilddunes.com](http://www.wilddunes.com)

## Around the state

*Nancy Short Ferguson*, senior state counsel and vice president for **Chicago Title Insurance Company**, and a Board Certified Specialist in Real Property Transactions, has been appointed by Secretary of State Elaine Marshall as a member of the Secretary's Advisory Council on the Uniform Real Property Electronic Recording Act (URPERA). The Act will provide legislative authorization and a means of assuring minimum standards for electronically recording real property records. The Advisory Council will make recommendations for implementation of those standards in North Carolina.

Ferguson was selected from among three NCLTA members nominated by President Bryan Rosenberg. She is one of the founders of the NC Land Records Task Force, is currently serving as the NCLTA representative to the NCCUSL Task Force drafting the Uniform Mortgage Satisfaction Act, is a past president of NCLTA and the Greensboro Bar Association, and has served on the Real Property Section Council as Secretary and Technology and WEB committee chair since 2000.

# Land Records Task Force discusses refusal authority, fraudulent liens, and e-recording

by Sarah Friede, NCLTA liaison to NC Land Records Task Force

The Land Records Task Force, which held its quarterly meeting in August, continues to discuss the controversial issue of how much authority, if any, Registers of Deeds have to refuse to record documents that appear to comply with recording requirements. Some Registers refuse to record documents because of the way they interpret various statutes governing powers of attorney, corporate acknowledgments, etc., leaving attorneys subject to the interpretations of individual Registers' who may or may not have statutory authority for their opinions. Many, if not most, members of the NC Association of Registers of Deeds are of the opinion that they should not and cannot be responsible for evaluating the substance of a document presented for recordation and are authorized to reject it only if it fails to comply with minimum recording standards or is not accompanied by the correct recording fee. Attorneys often mistakenly rely on the assumption that any defects in an acknowledgment is cured if a Register accepts the document for recording, but the law is clear that recordation of a defective instrument does not make the instrument valid. To what extent the land title industry and real property attorneys want registers to examine documents and impose requirements before recording is of ongoing concern to all parties.

At the opposite end of the same issue lies the problem of fraudulent liens and fraudulent lien releases, and what obligation the registries might have to refuse to record fraudulent documents. Fraudulent mortgage satisfaction documents are being presented to registries by various companies available for hire over the internet that purport to be able to release of record any lien, whether voluntarily or involuntarily placed on the property. There are also an increasing number of fictitious liens being filed by persons seeking to use public records as a means of harassing judges, other public officers, or anyone in the general public who has had the misfortune to annoy the wrong person.

Registers are receiving court orders to "remove" from the public records liens determined to be fictitious, as well as personal

information such as social security numbers, addresses of police officers or domestic violence victims, etc., which may have been placed on previously-recorded documents. Although the Registers are sympathetic to possible identity theft, they are not statutorily permitted to edit public records. In addition, many hold to the theory that once information appears on public records, it is presumed to be disseminated to the public such that redaction would be ineffective (essentially closing the barn door after the horse is out).

The other major topic discussed at the summer meeting of the task force is the pending electronic recording bill proposed by Senator Berger. The bill as it was initially proposed lacked clear standards for electronic recording and also failed to take into account the technological incompatibility problems (i.e., software used by registries being unable to read or accept data generated by entities submitting electronic documents). Other problems that need to be addressed at a practical level are how to allow attorneys to submit documents and make electronic payments to registries while comporting with State Bar trust account regulations. Senator Berger has submitted the bill to the legislative committee for study and all interested parties hope to have a more comprehensive bill for the 2005 legislative session.

The task force is hoping to submit articles regularly to the NCBA Real Property Section newsletter highlighting some of these ongoing issues, as well as offering for consideration some practical solutions to common recording problems. In addition, Clark Brewer (who represents the RPS on the task force) is forming a subcommittee of the task force to address fictitious liens and is hoping to add representatives of the Attorney General's office and a few other organizations. The next meeting of the task force is scheduled for November 3 at Young, Moore & Henderson in Raleigh. As always, all NCLTA members are welcome to attend meetings, or submit opinions, concerns, or topics for discussion to Sarah Friede ([sarah@statewidetitle.com](mailto:sarah@statewidetitle.com)), NCLTA representative to the task force.

# Summary of State Legislation from 2004 Short Session

By Chris Burti, NCLTA Legislative Committee Chair

Now that the 2003-2004 NC General Assembly's Legislative Session has wrapped up, it is time to report on changes affecting the title industry and real property practice that occurred during this summer's Short Session. (Ed. Note: In order to save typesetting charges, the actual bill wording is included in a separate document attached to this newsletter either at the end of the hard copy version or as an additional PDF in the electronic version.)

## Paralegal Profession Act Substitute

House Bill 356, ratified on July 16, 2004, substituted an amendment to Chapter 84 in lieu of last year's H957 (S922) that had proposed creating a new Chapter 84B to regulate the paralegal profession. This legislation is the culmination of several years of work by members of the legal profession, lawyers and educators. The former bill contained provisions for a regulatory board, qualification, registration and sanctions. Certification would be voluntary as opposed to licensing. The legislation would have made it illegal to refer to oneself as a paralegal unless certified under the Act. The current bill passed by the Legislature was modified significantly after input by the North Carolina State Bar.

The new legislation is far simpler and streamlined. It simply authorizes the Council to certify and regulate the professional conduct of "State Bar certified paralegals" and provides enforcement authority. The bill is less encompassing than the prior proposals in that it does not authorize the State Bar to regulate the use of the term 'paralegal' as professional designation. Rather, it authorized the Council to regulate the use of the designations, "North Carolina Certified Paralegal," "North Carolina State Bar Certified Paralegal," or "Paralegal Certified by the North Carolina State Bar Board of Paralegal Certification".

It may well be a distinction without a difference unless certification carries with it sufficient economic benefit to discourage

remaining uncertified. The legislation leaves the details of the process to the State Bar. Therefore, issues such as educational requirements, experience, examination, composition of boards and grandfathering existing paralegals not fully meeting new minimum educational standards will still need to be hammered out.

## PUD and Condo Acts Amended

Senate Bill 1167 appears to be a legislative repeal of the North Carolina Supreme Court decision in *Wise V. Harrington Grove Community Association, Inc.*, \_\_\_ N.C. \_\_\_, (No. 428a02, Filed: 22 August 2003). This decision resulted from a declaratory judgment action brought by lot owners against the subdivision's homeowners association. The question analyzed by the Supreme Court was whether the North Carolina Planned Community Act (the PCA) retroactively authorizes a homeowners association to fine lot owners for violations of restrictive where there is a lack of express authority in the organizational documents (the declaration, articles of incorporation, or bylaws). The Court held that the PCA does not grant defendant such a power, and reversed the Court of Appeals and trial court. It modifies Chapter 47C, referred to as the New Condo Act and Chapter 47F, the Planned Unit Development Act. The addition of the words "unless the declaration expressly provides to the contrary" to the numerous empowering provisions in the Acts that provide retroactive authority would seem to override the ruling in *Harrington*.

The bill is a lengthy setting out of extensive provisions, but the amendments are consistent throughout the Acts and we will only provide an example. We chose one section as representative as it was the provision at issue in *Harrington* and included the black line changes for comparison purposes.

The bill also includes amendments to Chapters 47C and 47F permitting notices of meetings to be "sent by electronic means,

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# May Executive Committee meeting includes strategic planning and routine updates

The NCLTA Executive Committee met on May 20 at the association's headquarters in Raleigh. Major discussions focused on a review of issues expected to arise during the Short Legislative Session. The overall state legislative agenda for real property and title insurance was not considered very controversial at this point. Plans for the 2004 convention were fairly complete and a budget was approved. Although several potential sponsors had contacted the association about exhibiting or sponsoring events, at the time of the meeting, none of the contacting companies had made a commitment.

It was noted that the Real Property Section Forms Committee was constituted with NCLTA representatives. Gary Whaley is working on a draft of a revision to the Preliminary Opinion on Title (1-P). It was suggested to develop lien waiver forms that could be used for multiple companies.

NC Joint Land Records Task Force Liaison Sarah Friede reported that the Task Force had discussed the e-recording legislation and problematic "fictitious liens." The Executive Committee selected Wild Dunes as the site of the 2006 annual convention.

Both during the Executive Committee and the strategic planning session that immediately followed, a number of issues arose wherein NCLTA might cooperate with the Insurance Commissioner's Office. A meeting has been set up by the NCLTA leadership with Commissioner Jim Long for August 31 to discuss these strategic issues.

## Welcome new members

The following new members were approved by the NCLTA Executive Committee at its spring meeting, May 20, 2004:

### Agency member

#### **BB&T Title Insurance Agency (A)**

Larry D. Johnson  
2607 Oberlin Rd., Suite 104  
Raleigh, NC 27608  
(919) 789-8288  
Fax (919) 789-8280  
ljohnson@suretylandtitle.com

### Associate member

#### **Belinda Lee-Ellington (new contact)**

DATA TREE  
550 West C St., Suite 2040  
San Diego, CA 92101  
(619) 231-3300  
(800) 789-7244  
Fax (619) 231-3301  
bellington@datatree.com  
www.datatree.com

### Attorney members

#### **J. Keith Calder**

Calder & Calder  
611 Princess St.  
Wilmington, NC 28401  
(910) 763-1683  
Fax (910) 343-9444

#### **David S. Pokela**

Nexsen Pruet Adams Kleemeier, PLLC  
701 Green Valley Rd., Suite 100 (27408)  
P.O. Box 3463  
Greensboro, NC 27402  
(336) 373-1600  
Fax (336) 273-5357  
DPokela@NPAKLAW.com

#### **Robert W. Porter**

Robert W. Porter, AAL  
3600 Country Club Rd., Suite 102  
Winston-Salem, NC 27104  
(336) 659-0062  
Fax (336) 659-0104

# Title Triumph board game launched

The American Land Title Association has introduced a new concept in title insurance education, "TITLE TRIUMPH™ The Game of



**Land Title Knowledge**", a question-and-answer board game for land title professionals. This new employee training tool is unique and challenging twist in education, emphasizes team building, and is a fun and effective reinforcement of industry knowledge.

Topics covered in the playing of Title Triumph™ include:

- closing & escrow
- search & exam
- commitments & policies
- general industry

The object is to test employees' knowledge and comprehension. While playing the game, the facilitator can identify strengths and weaknesses in an individual's knowledge of the profession and then recommend customized training programs accordingly. Title Triumph™ can make your staff more effective and stronger.

Title Triumph™ is designed for team or individual play in 45-60 minute sessions, thereby perfect for lunch hour training! You can play at your conference table. No high tech equipment is necessary.

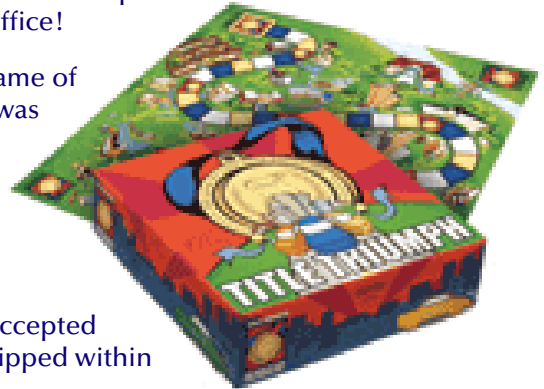
The game box includes:

- 200 game questions – enough for multiple sessions without repeating questions
- 50 scenario advancement/penalty cards
- 25 blank cards provided for customization to your company, state or region
- 19" x 19" quad-fold game board town map

- Instructions and Game Rules
- Answer Key booklet
- Six car tokens – to move on the town map
- Large die – so that everyone at the table can see the number rolled
- 30-second timer – to keep the game moving along quickly

You will want to make Title Triumph™ regular events in your office!

"Title Triumph™ The Game of Land Title Knowledge" was premiered during the Title Triumph™ Tournament during the 2003 ALTA Annual Convention in Phoenix, AZ.



Orders are now being accepted and games are being shipped within a week to 10 days.

ALTA member price: \$135 + \$11 (shipping & handling); non-member: \$185 + \$11 (shipping & handling) For bulk purchases of 11 or more games – the unit price drops \$30 per game; shipping & handling charges are determined on a case-by-case basis.

Click here to order [Title Triumph™](#) using a secure order form.

## Appeals Judge named new AOC Director from NCBA e-bar

State Supreme Court Chief Justice I. Beverly Lake Jr. has named former N.C. Court of Appeals Judge Ralph A. Walker to succeed John M. Kennedy as director of the Administrative Office of the Courts. Walker, a former NCBA vice president who also served as a Superior Court judge, assumed his new duties in early August. Kennedy, who served for more than a decade as the Wake County Clerk of Court, retired last month after serving as the AOC director for three years.

# Lots to do in Charlottesville and Albemarle County during Convention

As the summer winds down and the children return to school, consider the wide variety of appealing activities and attractions available during the 2004 NCLTA Annual Convention, September 16-18, in Charlottesville, VA, and surrounding Albemarle County. No trip to Charlottesville/Albemarle County ([www.charlottesville-tourism.org](http://www.charlottesville-tourism.org)) is complete without a visit to its five historical gems:

- **Monticello**, Thomas Jefferson's beloved home and architectural masterpiece,



Photo by Tanya S. Henderson

begun in 1769, when he was 26. Perched on a mountaintop overlooking the city of Charlottesville, Monticello is a majestic reminder of Jefferson's creativity and talent. No other home in the United States more accurately reflects the personality of its owner than Monticello.

- The grounds of the **University of Virginia**, including the Rotunda and Lawn, designed by Jefferson to be what he called an "Academical Village." The Academical Village includes a rectangular, terraced green space known as the Lawn; two parallel rows of buildings, the Pavilions, connected by colonnaded walkways and student rooms; and



Courtesy of Charlottesville/Albemarle Convention & Visitors Bureau, [www.SoVeryVirginia.com](http://www.SoVeryVirginia.com)

the Rotunda, which closes off the north end of the Lawn. The Rotunda, a half-scale interpretation of the Pantheon in Rome, is the signature landmark of the University and its Dome Room originally housed the University library.

- **Ash Lawn-Highland**, the restored home of James Monroe, 5th President of the United States and close friend of Thomas Jefferson. The 550-acre estate recreates the atmosphere of a working farm, with strutting peacocks, spinning and weaving demonstrations, open hearth cooking demonstrations and tours of the house and gardens.



Courtesy of Charlottesville/Albemarle Convention & Visitors Bureau, [www.SoVeryVirginia.com](http://www.SoVeryVirginia.com)

- **Historic Court Square** in downtown,



Courtesy of Charlottesville/Albemarle Convention & Visitors Bureau, [www.SoVeryVirginia.com](http://www.SoVeryVirginia.com)

familiar to Jefferson, Monroe, and James Madison, three former U.S. Presidents from this area. Buildings within the historic Court Square include 300 Court Square, which is the site of the Eagle Tavern, a simple wooden frame building which stood there in 1791. The brick replacement, which visitors can see today, provided food and lodging on court days, as well as

public dances and victory celebrations within its spacious parlor. Nearby is the slave block where slaves were auctioned and sold and Swan Tavern, made famous by the owner's son who warned of the approach of British forces when,

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## Summary of State Legislation from 2004 Short Session

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including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner.”

### Technical Corrections

#### I. Technical Corrections Act (2004)

(S1225) Of the 62 sections included in this bill, the following should be of interest to real property professionals:

Section 6 updates the curative provision of the Notary Act. G.S. 10A-16(d) to read:

“(d) This section applies to notarial acts performed on or before February 1, 2004.”

Section 16 modifies G.S. 47-2 to add the following to the laundry list of officials recognized in North Carolina as competent to take acknowledgments for conveyances: “associate consul, or any other person authorized by federal law to acknowledge documents as consular officers”.

Section 17 adds a new curative provision to Chapter 47 of the General Statutes.

“§ 47-50.1. Register’s certificate omitted. In all cases prior to October 1, 2004, where it appears from the records of the office of the register of deeds of any county in this State that the execution of a deed of conveyance or other instrument by law required or authorized to be registered was duly signed and acknowledged as required by the laws of this State, and the register of deeds has failed to certify the correctness of the acknowledgment as required by G.S. 47-14(a), the registrations are hereby validated and the instrument so appearing in the office of the register of deeds of that county is effective to the same extent as if the register of deeds had properly certified the correctness of the acknowledgment.”

Section 18 adds the clerk of a superior court, deputy clerk, or assistant clerk to the curative provision for lack of a notarial seal in G.S. 47-53.1.

“§ 47-53.1. Acknowledgment omitting seal of clerk or notary public. Where any person has taken an acknowledgment as either a notary public or a clerk of a superior court,

deputy clerk of a superior court, or assistant clerk of a superior court and has failed to affix his or her seal and this acknowledgment has been otherwise duly probated and recorded then this acknowledgment is hereby declared to be sufficient and valid. This section applies only to those deeds and other instruments acknowledged prior to January 1, 1991.”

#### II. Technical Corrections Act (2003)

(H 281) This is the technical corrections bill that did not pass in the 2003 Session. There are numerous unrelated changes to the General Statutes. Of interest to real property attorneys are the following changes. There are 54 sections to this bill. Of interest to real property attorneys are the following changes.

**SECTION 14.** G.S. 1-44.2(b) reads as rewritten: “~~(b) Persons claiming ownership contrary to the presumption established in this section shall have a period of one year from the date of enactment of this statute or the abandonment of such easement, whichever later occurs, in which to bring any action to establish their ownership.~~ The presumption established by this section is rebuttable by showing that a party has good and valid title to the land.”

**SECTION 15.(a)** G.S. 1-47(1) reads as rewritten: “**§ 1-47. Ten years.** Within ten years an action - (1) Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its ~~rendition.~~ entry. No such action may be brought more than once, or have the effect to continue the lien of the original judgment. ....”

**SECTION 15.(b)** G.S. 1-52(8) reads as rewritten: “**§ 1-52. Three years.** Within three years an action - ... (8) For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the ~~rendition~~ entry of the judgment, or the issuing of the last execution thereon. ....”

**SECTION 30.** G.S. 30-3.6(c) reads as rewritten: “(c)A written waiver that would have been effective to waive a spouse’s right to

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## Summary of State Legislation from 2004 Short Session

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dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of ~~decedent's~~ decedents dying on or after January 1, 2001."

**SECTION 31.(a)** G.S. 35A-1213(b) reads as rewritten: "~~(b)An individual appointed as general guardian or guardian of the estate must be a resident of the State of North Carolina.~~ A nonresident of the State of North Carolina, to be appointed as general guardian, guardian of the person person, or guardian of the estate of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. Such appointment must be approved by and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk ~~may~~ shall require a nonresident guardian of the estate or a nonresident general guardian to post a bond or other security for the faithful performance of the guardian's duties. The clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties."

**SECTION 31.(b)** G.S. 35A-1290(c) reads as rewritten: "(c)It is the clerk's duty to remove a guardian guardian or to take other action sufficient to protect the ward's interests in the following cases: (1) The guardian has been adjudged incompetent by a court of competent jurisdiction and has not been restored to competence. (2) The guardian has been convicted of a felony under the laws of the United States or of any state or territory of the United States or of the District of Columbia and his citizenship has not been restored. (3) The guardian was originally unqualified for appointment and continues to be unqualified, or the guardian would no longer qualify for appointment as guardian due to a change in residence, a change in the charter of a corporate

guardian, or any other reason. (4) The guardian is the ward's spouse and has lost his rights as provided by Chapter 31A of the General Statutes. (5) The guardian fails to post, renew, or increase a bond as required by law or by order of the court. (6) The guardian refuses or fails without justification to obey any citation, notice, or process served on him in regard to the guardianship. (7) The guardian fails to file required accountings with the clerk. (8) The clerk finds the guardian unsuitable to continue serving as guardian for any reason. (9) The guardian is a nonresident of the State and refuses or fails to obey any citation, notice, or process served on the guardian or the guardian's process agent."

**SECTION 31.(c)** G.S. 35A-1291 reads as rewritten: "**§ 35A-1291. Interlocutory Emergency removal; interlocutory orders on revocation.** The clerk may remove a guardian without hearing if the clerk finds reasonable cause to believe that an emergency exists that threatens the physical well-being of the ward or constitutes a risk of substantial injury to the ward's estate. In all cases where the letters of a guardian are revoked, the clerk may, pending the resolution of any controversy in respect to such removal, make such interlocutory orders and decrees as the clerk finds necessary for the protection of the ward or the ward's estate or the other party seeking relief by such revocation."

### The Studies Act of 2004

The following legislative issues of concern to real property attorneys were assigned to the Legislative Study Commission.

#### **ELECTRONIC RECORDATION AND REVISION OF NOTARY LAWS** (S.B. 1094 - Berger)

This is commendable legislation that should produce well considered legislation to provide for electronic recordation of conveyances with accompanying provision for electronic acknowledgments, to modernize laws regarding non-profit associations, and dealing with guardianship.

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## Summary of State Legislation from 2004 Short Session

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**SECTION 6.1.** The General Statutes Commission shall study the issue of electronic recordation, specifically with regard to real property documents and other documents filed with registers of deeds. The Commission shall study methods for establishing uniform legal standards for the receipt, recordation, authentication, preservation, and retrieval of electronic documents. The Commission shall include in its study consideration of the Uniform Real Property Electronic Recordation Act drafted by the National Conference of Commissioners on Uniform State Laws as well as other resources on electronic recording standards from national organizations such as the Property Records Industry Association (PRIA) and the Mortgage Industry Standards Maintenance Organization (MISMO). The General Statutes Commission shall report its findings and recommendations and any legislative proposals to the 2005 General Assembly upon its convening.

**SECTION 6.2.** The Secretary of State shall study the issue of amending the notary public laws in order to modernize and simplify their administration. The study shall also address the issue of electronic notarization. The Secretary of State shall report its findings and recommendations and any legislative proposals to the 2005 General Assembly upon its convening.

### **PART VII. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT SECTION**

**7.1.** The General Statutes Commission is directed to study the Uniform Unincorporated Nonprofit Association Act in consultation with interested parties and to report to the 2005 General Assembly on the Commission's recommendations and legislative proposals.

### **PART XLV. LEGISLATIVE STUDY COMMISSION ON STATE GUARDIANSHIP LAWS (H.B. 1409 - Nye, Weiss, G. Wilson; S.B. 1152 - Swindell) SECTION 45.1.**

There is created the Legislative Study Commission on State Guardianship Laws. The purpose of the Commission is to review State law pertaining to guardianship and its relationship to other pertinent State laws such as the health care power of attorney, the right to a natural death, and durable power of attorney.

**SECTION 45.2.** The Commission shall consist of 16 members as follows: (1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives. (2) Four members of the Senate appointed by the President Pro Tempore of the Senate. (3) The Director of the Administrative Office of the Courts, or the Director's designee. (4) The Director of the Division of Aging in the Department of Health and Human Services, or the Director's designee. (5) A county director of social services appointed by the President Pro Tempore of the Senate. (6) A clerk of superior court appointed by the Speaker of the House of Representatives. (7) A physician who specializes in geriatrics appointed by the President Pro Tempore of the Senate. (8) An attorney who has experience in guardianship matters appointed by the Speaker of the House of Representatives. (9) A representative of the Governor's Advocacy Council for Persons With Disabilities. (10) An area authority or county program director for mental health, developmental disabilities, and substance abuse services, appointed by the Speaker of the House of Representatives. In addition, representatives designated by the following organizations shall serve as ex officio, nonvoting members of the Commission: (1) The North Carolina Bar Association. (2) The Arc of North Carolina. (3) North Carolina Guardianship Association. (4) Alzheimer's Association - Western Chapter. (5) Alzheimer's Association - Eastern Chapter. (6) Carolina Legal Assistance. (7) The Area Agencies on Aging. (8) County Departments of Aging. (9) Friends of Residents in Long Term Care. The Speaker of the House of Representatives shall designate one Representative as co-chair, and the President Pro Tempore shall designate one Senator as cochair. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment. The Commission shall expire upon delivering its final report. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the

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## Summary of State Legislation from 2004 Short Session

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cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

**SECTION 45.3.** In conducting the study, the Commission shall consider the following: (1) Whether guardianship should be a remedy of last resort used only if less restrictive alternatives are insufficient. (2) The definition of incompetency. (3) Whether courts should be required to make express findings regarding the extent of a person's incapacity and limit the scope of the guardianship accordingly. (4) Legal rights retained or lost as a result of being adjudicated incompetent. (5) The proper role of attorneys and guardians ad litem in guardianship proceedings. (6) The role of public human services agencies in providing guardianship services. (7) Legal procedures and protections in guardianship proceedings. (8) Public monitoring of guardianship. (9) Funding for guardianship services provided by public and nonprofit agencies. (10) Educating citizens with respect to guardianship and alternatives to guardianship. (11) Prudent investor rules. (12) Powers, duties, and liabilities of guardians. (13) Review of the State's adult protective services law. (14) Enactment of the Uniform Guardianship and Protective Proceedings Act (UGPPA). (15) Whether guardianship statutes need revision to provide greater protection of the health and welfare of incapacitated adults. (16) Whether the State should track the number of people under private guardianship and, if so, proposed methods for the tracking.

**SECTION 45.4.** The Legislative Study Commission on State Guardianship Laws may make an interim report to the 2005 General Assembly not later than the convening of the 2005 General Assembly, and shall make its final report to the 2006 Regular Session of the 2005 General Assembly upon its convening.

### Identity Theft Penalty Enhancement Act In Congress, H.R. 1731

The terms "identity theft" and "identity fraud" refer to all types of crimes in which someone wrongfully obtains and uses another person's personal information. This Act addresses the growing problem of identity theft. Many identity thieves receive short terms of imprisonment or probation in Federal prosecutions. This does not discourage many of these thieves from going on to use false identities to commit much more serious crimes after their release.

The following are examples of instances in which persons involved in identity theft received little or no prison time edited from the legislative history:

*U. S. v. Amry.* On October 15, 2003, Mohamed Amry, a former employee of a Bally's Health Club in Cambridge, Massachusetts, pleaded guilty to a multi-count indictment charging him with conspiracy to commit bank fraud (18 U.S.C. § 371), bank fraud (18 U.S.C. § 1344), conspiracy to commit access device fraud and access device fraud (18 U.S.C. § 1029), and conspiracy to commit identity theft (18 U.S.C. § 1028). Amry, using a skimmer to obtain credit card data from members of the health club, provided stolen names, Social Security numbers, and credit-card information of at least 30 people to Abdelghani Meskini, who pleaded guilty to conspiracy in connection with the plot to blow up Los Angeles International Airport in 1999. Using victims' names, Amry reportedly assisted Meskini in creating false green cards and Social Security cards.

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## Summary of State Legislation from 2004 Short Session

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Meskini used the information to open bank accounts in New York, where he deposited counterfeit checks. Amry was not charged with knowledge of the terrorists' intentions in obtaining and using the stolen identities. On January 17, 2003, Amry was sentenced to 15 months imprisonment.

*U. S. v. Scheller.* Suzanne M. Scheller was a financial institution employee. Scheller accessed the financial institution's computer system and searched for potential customers for a friend who was starting a real estate business. After identifying prospects, Scheller then provided the friend with the customer account information. Scheller admitted that she knew her unauthorized access was against the policy of the financial institution. The investigation established that some of the information provided by Scheller was actually used by another individual unknown to her as part of an identity theft scheme. Imposters used the customer account information to steal the identity of the customers and conduct transactions at the financial institution. Scheller pleaded guilty to one count of obtaining unauthorized computer access to customer account information from a financial institution, in violation of 18 U.S.C. §§ 2, 1030(a)(2)(A), 1030(c)(2)(B)(i), 1030(c)(2)(B)(iii). On November 30, 2001, Scheller was sentenced to 36 months probation.

*U. S. v. Opara.* On February 7, 2002, Chuck Opara, after having pleaded guilty to multiple counts of submitting false claims and identity theft, was sentenced to 15 months imprisonment. According to court documents filed in this case, Opara engaged in a multimillion dollar fraud scheme.

*U. S. v. Maxfield.* On five separate occasions between 1996 and 1998, William K. Maxfield used the Social Security number of a William E. Maxfield (no relation) to obtain loans and lines of credit. Maxfield defaulted on some of the loans however, the more significant injury was to William E. Maxfield, who suffered harm to his credit rating and had great difficulty in clearing what ap-

peared to be delinquent accounts. On January 9, 2003, William K. Maxfield was sentenced to 10 months imprisonment.

*U. S. v. Rodriguez.* While receiving Title II disability benefits, Dolores Rodriguez worked as a science teacher at a school under her husband's Social Security number. She received over \$80,000 in disability benefits. She pled guilty to a violation of 18 U.S.C. § 641. She was sentenced to 12 months home confinement, 5 years probation, and restitution.

*U. S. v. Ferguson.* Diana Ferguson had stolen the identity of another person years earlier. She used the stolen identity to apply for and receive Social Security benefits. She also used the stolen identity to establish credit. She received over \$45,000 in Social Security disability benefits. She pled guilty to several charges including violations of 18 U.S.C. § 641 and 18 U.S.C. § 1028(a)(7). She was sentenced to 5 years probation and restitution.

*U. S. v. Benavides-Holguin.* Porfirio Benavides-Holguin, a resident of Chihuahua, Mexico, received Title XVI benefits under the name and Social Security number of his former brother-in-law, a U.S. citizen. He pled guilty to both counts of a 2 count indictment alleging violations of 42 U.S.C. § 1383(a)(2). He was sentenced to 10 months confinement, 3 years of non-reporting supervised release, and restitution.

The bill toughens penalties for violations of the law by adding a mandatory two-year prison sentence for persons convicted of using stolen personal information or credit card numbers to commit crimes. It also amends current law to impose a higher maximum penalty for identity theft used to facilitate acts of terrorism by providing that those convicted of identity theft to "commit an act of terrorism" will receive an additional five years in prison. President Bush signed the bill into law on July 16, 2004.

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## President's message

*continued from page 1*

looking at the structure and content of the exam, we have some suggestions for updating the questions to reflect issues raised by current trends in the title insurance industry. The NCLTA is offering its assistance in evaluating the content of the exam questions, as well as the format, and could provide updated questions and answers for inclusion in future exams.

- **Continuing education for title agents.** Currently there are no continuing education requirements for agents. NCLTA would like to discuss the possibility of requiring a certain amount of continuing education of title agents. The Association could provide a central point for administering the program and offer courses of education. This would encourage (although not require) participation in our association, raise the professionalism and competency of agents, and would allow the Department of Insurance to demonstrate a continued dedication to consumer protection in the area of real estate.

- **Zurich and other Radian-type products.** Zurich, under several names, is offering a lien impairment product that the NCLTA believes qualifies as title insurance. Much like the Radian example of a few years ago, we would like to supply information to the Department and encourage a similarly strong stance with Zurich that they may not offer this product in North Carolina unless they comply with all applicable title insurance statutes and regulations, including the requirement that a binder or policy can only be issued based on an opinion of title signed by a NC licensed attorney."

I believe this is a strong agenda and has many points that show that we are willing to support the Department in fulfilling their objectives. At the same time, we need the cooperation of the Department if we are to grow the membership and effectiveness of our Association. We look forward to the meeting and will report on the outcome in our next issue of the newsletter.

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## National Electronic Recording/Mortgage Satisfaction Acts approved

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unless the lender had agreed to receive electronic notifications (consistent with UETA and E-SIGN).

2. The revised Act will include a statement that a creditor that received a payoff request but had previously assigned the mortgage shall give a notification of the assignment with the name and address of the assignee. The penalty provision, however, remains unchanged so that a penalty would be triggered only by the failure to provide a payoff statement; thus, the Act as approved would not authorize the imposition of the penalty upon a mortgagee that failed to give notification of the assignment.

While there were small stylistic or structural changes in many of the other sections, none of them reflected a serious substantive change from the draft as previously discussed by the Committee.

One final note of interest: Members of the Joint Editorial Board for Real Property Acts requested that the Conference leadership maintain some or all of the Committee to continue to explore the possibility of a one-touch mortgage satisfaction procedure akin to the system currently used in Minnesota. I have been asked and have volunteered to continue to serve as one of the Observers involved in those discussions.

Any information, comments or suggestions should be forwarded to: [Nancy.Ferguson@ctt.com](mailto:Nancy.Ferguson@ctt.com).

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## Lots to do in Charlottesville and Albemarle County

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in 1781, Jefferson and Virginia's government quit Richmond under threat of capture by the British, and reconvened in Charlottesville.

- **Michie Tavern**, ca. 1784, one of the oldest homesteads in Virginia, it was disassembled and rebuilt on its current site in 1927-28 to serve as a museum.



Courtesy of Charlottesville/Albemarle Convention & Visitors Bureau, [www.SoVeryVirginia.com](http://www.SoVeryVirginia.com)

The Charlottesville/Albemarle Convention and Visitors Bureau sells a combination discounted ticket for touring Monticello, Ash Lawn-Highland, and Michie Tavern Museum called the "Presidents' Pass" for \$25, a \$5 savings.

Tours are also offered of Montpelier in Orange County, the lifelong home of James Madison, father of the Constitution, author of the Bill of Rights, fourth U.S. President, and close friend of Thomas Jefferson. A plantation estate of 2,700 acres, Montpelier offers not only the home of James and Dolley Madison and later the William and Annie duPont family, but also a restored formal garden, a 200-acre old-growth forest, active archaeological sites, miles of walkways, and breathtaking vistas of the Blue Ridge.

The University of Virginia is holding its only home game this football season open to the public. Public tickets are \$25 each for this game on Saturday, September 18, with the University of Akron, with kickoff scheduled for 3:00 p.m.

<http://virginiasports.collegesports.com/tickets/tickets-static-info/tickets-ftbl.html>

And what NCLTA convention is complete without the Friday afternoon golf tournament? Owned by the University of Virginia and adjacent to The Boar's Head Inn, Birdwood is a golf course rich in history. Its verdant hills were part of a 1739 "upland wilderness" land patent, one of the earliest in the colony. The same craftsmen who built the Rotunda at the University of Virginia built the Birdwood Pavillion in 1819. Over time, the property's prized farmland became a top producer of Hereford cattle and prizewinning show horses. UVA acquired the property in 1974, and 10 years later, enlisted architect Lindsay Ervin to transform Birdwood into the par-72 championship golf course it is today. With invigorating vistas of the spectacular Blue Ridge Mountains and 18 holes of challenging golf, *Washington Golf Monthly* calls Birdwood one of the Mid-Atlantic's top "must play" courses. [www.boarsheadinn.com/activities/birdwood/](http://www.boarsheadinn.com/activities/birdwood/)

Of course, there are always the "right reasons" to register for and attend the convention: six (6) hours of Continuing Legal Education (CLE), a terrific educational program, the wonderful comraderie, and opportunity to be away from the daily routine for a change of pace and air, a chance to find out what is going on with your colleagues and competitors, the food and drink, and a relaxed way to forge new ties or cement old ones between approved attorneys and title company representatives. If you have not done it yet, send in your reservation form to The Boar's Head Inn and your registration form to NCLTA to join us September 16-18 in Charlottesville. [www.nclta.org/convention.html](http://www.nclta.org/convention.html)



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