

# Carolina Update

NCLTA's Exclusive Report to its Members



## Contents

- 2 Convention plans being finalized
- 2 Executive Committee tackles full agenda
- 3 NC Department of Insurance renews Advisory Organization License
- 3 ALTA and A.M. Best produce 4th annual title industry report
- 3 Nominations for Secretary sought
- 4 Around the state
- 4 Convention calendar
- 6 Welcome new members

## President's message

*Nancy Short Ferguson*



To say that the 2001-2002 fiscal year has been busy is like saying that the Pacific Ocean has some water. And it promises to continue so. I heartily encourage everyone to attend our convention in

Atlantic Beach for many reasons – not the least of which is the excellent camaraderie! We have so many things to discuss, both on and off of Chris Burti's first-rate agenda of knowledgeable speakers and current topics!

We will continue to see the ramifications of September 11 for many years to come, including increases in rates and costs for nearly everything (except home loans and title insurance). High cost, high risk mortgage lenders are creating a flurry of foreclosures and flushing out quantities and types of title claims unimaginable even 15 years ago. A priority on protection of consumers and the reliability of our public records is quickly being replaced by the "quicker, better, cheaper" mantra with the implicit assumption that technology can replace judgment and experience in *all* things.

### Mortgage impairment

"Who do you think is behind the FTC – DOJ letter to the NC State Bar?" When members of the practicing bar are asked this question, the automatic response is: "The title companies, of course." "But what if there was no title insurance required?" I ask. And thus begins my introduction to why mortgage impairment is one of the most significant threats to lawyers engaged in a real estate

practice in North Carolina. The availability and acceptability of mortgage impairment products by major lenders (including FNMA, FHLMC, FHA and VA) are the foundation blocks upon which the FTC's proposal to remove lawyers from the closing process is based! And those who control the closing and title process will *not* be title companies! "Follow the money!"

Commissioner of Insurance Jim Long and his excellent team, including Peter Kolbe, Jackie Darden, and Charles Swindell, held true to North Carolina consumers, real property attorneys, and title insurers in issuing their April 17, 2002 Bulletin Number 02-B-3 (available on-line at <http://www.ncdoi.com/Industry/LBAR/Bulletins/2002/02-B-3.pdf>) ruling that mortgage impairment *is* title insurance. All of us owe a debt of gratitude not only to the Commissioner and his staff, but also to those within our ranks who have diligently followed this effort, including especially Holly Alderman, Robert Bauchle, and Jay Hedgpeth who joined me on the visit to the Commissioner; Alton Russell who arranged for the meeting; Eva Searle at Investors Title who has monitored the Department of Insurance and other web sites religiously to keep us updated on news from all sources; and, of course, Penney De Pas for her sage advice and communication skills. ALTA has established a Mortgage Impairment Resource Center with a compilation of information being generated on-line for further information, located at <http://www.alta.org/mortgage/mortgage.htm>.

*continued on page 5*

# Convention plans being finalized

**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.

**North Carolina Land Title Association**  
1500 Sunday Drive  
Suite 102  
Raleigh, NC 27607-5163  
(919) 787-5181  
(919) 787-4916 Fax  
www.nclta.org

## Executive Staff

Penney De Pas, CAE  
*Executive Director*  
pdepas@olsonmgmt.com

Lauren Riley  
*Membership Services and Convention*  
lriley@olsonmgmt.com

©2002. NC Land Title Association. All rights reserved.

2002 Convention Chair Chris Burti has confirmed a terrific line-up of speakers for the annual convention and the association's 25th anniversary, slated for August 8-10 at the Sheraton Atlantic Beach in Atlantic Beach, NC. As always, on hand will be some perennial favorites and some new faces. A total of 6.25 hours of CLE credit has been requested from the NC State Bar Board of CLE, including 3 hours of Professional Responsibility/Ethics/Professionalism.

Proving the update for the American Land Title Association will be Stanley D. Friedlander of Continental Title Agency Corporation in Cleveland, Ohio. Friedlander serves as ALTA's Abstractors and Title Agents Section Chair. In addition, Ohio has a very active state title insurance association, so he should be a good source of information about what is happening around the country. Pat Hetrick will again amuse us, and keep us on our toes, with his rapid-fire case study and legislative update. Wayne Stephenson will return to update us on real estate claims from the perspective of Lawyers Mutual Liability Insurance Co. The newly-elected chair of the NCBA Real Property Section, Adam Foodman from Charlotte, will update us as to issues from that organization.

On Saturday, a special point-counterpoint presentation will occur when Raleigh attorney James K. Pendergrass, Jr., and Joe A.

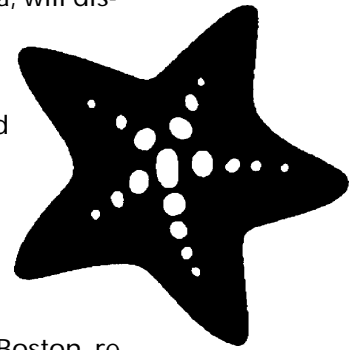
Reinhardt of Chicago Title in Maitland, Florida, will discuss Trust

Accounts and Defalcations from the bar and title company viewpoints.

Wrapping up the program will be Joe Drum of Fidelity National, Boston, reviewing the status of mortgage impairment issues.

At the annual banquet we will be celebrating 25 years of growth and service of the North Carolina Land Title Association (resulting from the split from the Carolinas Land Title Association in 1977) with a memorial history and recognition of the association's past leaders. And for those of you who come mostly for the links—the golf tournament will be played at Bogues Banks Country Club. Others can enjoy the wonderful beach, indoor and outdoor pools, and pier fishing as well as the sights, sounds, smells, and foods of the North Carolina coast.

Registration materials are expected to be emailed and mailed around the beginning of June. We expect a record crowd, so don't wait to sign up!



## Executive Committee tackles full agenda

The NCLTA Executive Committee worked through an extensive list of agenda topics during its February 12 meeting. In addition to making plans for the association's 25th anniversary celebration and the 2003 legislative agenda, the Executive Committee approved an investment policy and the auditor's report for the fiscal year 2001. President Nancy Ferguson presented an update on the status of mortgage impairment products and the title industry. A variety of speakers and topics were discussed for the 2002 annual convention, August 8-10, at the Sheraton Atlantic Beach.

The Executive Committee also considered language for a Declaration of Intent to Affix the Manufactured Home to Real Property, to be used when the new NC Department of Transportation Division of Motor Vehicles Form MVR-46G, Affidavit for Removal of Manufactured Home from Vehicle Registration, is not used. This new declaration will be posted to the NCLTA website under Forms.

The next meeting of the Executive Committee was held on May 15 in Raleigh.

# NC Department of Insurance renews Advisory Organization License

The North Carolina Department of Insurance has again renewed the Advisory Organization License of the N.C. Land Title Association for the purpose of NCLTA filing ALTA-approved forms on behalf of its title company members for the period July 1, 2002, through June 30, 2003.

By filing the ALTA forms for title insurance underwriters in the state, NCLTA saves both the individual title companies and the insurance department considerable duplication of effort.

When a form is adopted by ALTA, NCLTA files the form with the insurance department for all its members with one application. Title company members of NCLTA who wish to use the generic ALTA form may use it without any further filing with the NC Department of Insurance. In addition, because NCLTA is filing only in North Carolina, it is not required to answer questions about form filings in other states, whereas individual title companies must research and report that information. In turn, the insurance department staff need review only one form filing instead of multiple filings of the same (or slightly varied) form(s).

## ALTA and A.M. Best produce 4th annual title industry report

For the fourth year, ALTA has collaborated with A.M. Best on the report, "Title Insurance and Industry Statistics," released in December 2001. The study outlines the history of title insurance, the economic growth in 2000, and examines title industry attributes, economic results and issues, regulatory environment, business risks and unique challenges the industry faces in the rapidly changing real estate and insurance markets.

Data presented was gathered from various U.S. government agencies, the National Association of Insurance Commissioners, the National Association of Home Builders, A.M. Best, and filed statements presented by various title insurance companies in accordance with Generally Accepted Accounting Principles and Statutory Accounting Standards as represented by management. A copy of the report is available at <http://www.alta.org/mmbship/indrsrch/SR1101title.pdf>.

## Nominations for Secretary sought

The 2002 Nominations Committee, chaired by William B. Webb, Jr., with members Nancy S. Ferguson and Robert B. Rascoe, is seeking nominations for the position of Secretary on the Executive Committee, for the term beginning August 10, 2002. The Secretary position is a one-year term; however, the tradition is that each year each officer advances to the next officer position on the Executive Committee, a tenure which normally lasts five years through the Past President position.

You may submit your nominations to Will Webb at First American Title of the Carolinas, PO Box 31187, Charlotte, NC 28231, phone (704) 334-3060; fax (704) 344-0768; email: [wwebb@firstam.com](mailto:wwebb@firstam.com) or to the other members of the Nominations Committee.

## Around the state

**Donald C. Lampe** has joined Womble Carlyle Sandridge & Rice, PLLC, in the firm's Greensboro, NC office. He was formerly with Smith Helms Mulliss & Moore, LLP, which recently underwent a reorganization, resulting in the firm being divided into parts. The firm in Greensboro is now Smith Moore LLP.

**William E. Manning, Jr.**, has joined White and Allen, PA, in Kinston, NC. He was formerly with Wallace, Morris & Barwick, PA.

**Kenneth Stone** has joined the Greensboro office and **Janine Splawn** was promoted to branch manager in the Hendersonville office of *Fidelity National Title Insurance Co. of NY*. **Danita Minor** is the manager of the new Fidelity branch office in Manteo. Fidelity has appointed **Tammy Nicholson** as additional title counsel in its Raleigh branch.

**Debbie Brittain** is the new state manager for *Chicago Title Insurance Co.* in Charlotte. **Minette van Goethem** is the new branch manager in the *Chicago Title* Cary office while **Paula Wright** is the manager in the company's Durham office.

**Rudy Medina** is the new representative for *HomeFocus Services, LLC*.

**Penney De Pas**, executive director of NCLTA since 1985, was recently renewed as a Certified Association Executive (CAE) with the American Society of Association Executives (ASAE) through 2005. De Pas earned the CAE designation from ASAE in May 1992. To maintain the certification, an association executive must accumulate professional credits every three years based on their involvement in association management continuing education and the profession.

## Convention calendar

### **NCLTA 2002 Annual Convention**

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

•

### **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 Federal Conference**

April 13-15, 2003

•

### **ALTA 2003 Annual Convention**

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

•

### **ALTA 2004 Federal Conference**

April 19-21, 2004

•

### **ALTA 2004 Annual Convention**

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

The mortgage impairment insurers are involved with ALTA in an ongoing legal battle in California and political battles elsewhere. They argue, among other things, that they do not have to file forms, do not have to pay premium taxes, and do not have to comply with statutes and regulations in any state other than either their home state or the home state of the lender they insure. This is the typical mortgage guaranty paradigm because they are truly insuring the debt itself. But that same typical mortgage guaranty coverage requires delivery of good title as a precondition to triggering the claim – again, because it is based on insuring a true loss on the note! Also of note in North Carolina is that these mortgage impairment providers have not filed anything with the Department of Insurance despite two of the nation's largest banks being based here! The National Association of Insurance Commissioners (NAIC) Title Insurance Working Group is actively looking into the issue, which unfortunately draws away from its consideration of Creditors' Rights coverage, the other matter on its working agenda. This battle will continue for quite some time!

### **Federal Trade Commission and Department of Justice "request" to NC State Bar**

Nick Long, on behalf of the Real Property Section, has submitted a substantial package of information to the NC State Bar's Ad Hoc Committee addressing the December 14, 2001, letter from the FTC and DOJ. The Committee delayed an official response until they had further time to investigate. But they are anticipated to review and act on the issue at the July Quarterly Meeting of the State Bar. As North Carolina title insurers, the best we can do is to try to help educate both sides. The national groups have difficulty understanding that a "closing" in North Carolina includes many of the steps they cover elsewhere in their process – that it is far more than just a "signing." The FTC and DOJ will, hopefully, see that they are not necessarily looking out for the consumer in making these arguments, especially with regard to price for the package of services. On the other hand, NC attorneys

need to understand the national perspective on processing and closing loans and determine an effective way to fit into this process while maintaining a high standard of professionalism. We, as title insurers with contacts and experience with many states, can help our customer-attorneys with this educational process.

### **Mobile home legislation**

Our legislative efforts for the mobile home statute are proving fruitful in our claims departments and in our customers' ability finally, to reliably protect their clients. Many thanks go again to Chris Burti for all his diligence and perseverance to initiate this legislation. The Department of Motor Vehicles has been most helpful and cooperative. Many of the forms and the entire 387-page "Title Manual" are now posted on the web site of the DMV. Though initially DMV required lienholders to sign both a release on the Certificate of Title *and* to sign the Affidavit Form MVR-46G, they now understand that the release on the Certificate should be enough to free the title for cancellation by filing of the Affidavit without joinder by that releasing lienholder. We have an ongoing relationship with key people working on addressing our concerns, who have been very helpful and supportive of our efforts. In addition, representatives of NCLTA and the NC Bankers Association are continuing to address the outstanding questions as they arise, including the possibility of "clerical correction" legislation.

**NOTE:** County Tax Assessors have asked that the effective date for Section 1 of our bill be postponed to January 1, 2004, to allow counties time to update and change their records and valuations.

Some of the issues which still need addressing include: (1) the discrepancy that owners shall file an Affidavit, but have an election whether to file a Declaration of Intent, in order to convert to real property, (2) DMV's lack of ability to track or check status of homes for which a Declaration of Intent rather than an Affidavit is issued; (3) what consequence an incomplete Affidavit or

---

## President's message

continued from page 5

Declaration or failure to complete the procedure will have on the state of the title, and (4) should the title opinion now be required by DMV in order for a Certificate of Title to be reinstated be statutory or just an internal procedure? And, of course, the lien status for mobile homes is among many issues with which we are still coming to terms under Revised Article 9.

Certainly many of the questions for title insurers are "simpler." Either the Affidavit or the Declaration procedure must be followed for a "safe harbor" conversion and coverage as "land" under the title policy and ALTA 7. The MVR-46G complies with the new recording statute, *if a Cover Sheet with the 3" margin is attached*. The Freddie Mac guidelines, Section 22.21, have been revised to require all the mobile home information to be on the legal description, and to require an appraisal, among other things, if a mobile or manufactured home is involved. We need to encourage all lenders, realtors,

and attorneys to *communicate early* to make sure this is not a last minute issue. Lenders and realtors do not often realize that this is not a matter of public record.

### **Other Legislative Initiatives: Future Advances, Subordina- tions and Deed of Trust Cancellations**

Meetings are scheduled on various other statutory initiatives with representatives of the Real Property Section and the North Carolina Bankers Association, beginning in late June on the above topics. Many thanks to Ed Urban for his diligence and leadership on these matters. Those interested should contact either me or Ed Urban, chair of the NCLTA Legislative Committee.

**Conclusion:** COME TO THE CONVENTION!  
KEEP YOUR EYES OPEN AND KEEP IN TOUCH!!!

## Welcome new members

During its February 12 meeting, the Executive Committee of the N.C. Land Title Association approved the following as new members:

### **Attorney**

#### **Wendy H. Hughes**

The Law Firm of Hutchens and Senter  
4200 Morganton Rd. (28302)  
P.O. Box 2505  
Fayetteville, NC 28302  
(910) 864-6888, ext. 505  
FAX (910) 864-6848  
Email:  
whughes@hutchensandsenter.com

### **Affiliate**

#### **Terry J. Reaves**

Smith, Dickey, Smith, Hasty  
& Dempster, PA  
555 Executive Place (28305)  
P.O. Box 58209  
Fayetteville, NC 28305  
(910) 485-8020  
FAX (910) 485-2505  
Email: TLJReaves@aol.com