



Carolina Update

NCLTA's Exclusive Report to its Members

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President's message

By Gary M. Whaley



Spring is here, the legislature is in session, and the interesting work of the Association is in full swing. On Tuesday, February 22, 2005, representatives of NCLTA met with members of the

North Carolina Department of Insurance on three separate issues during three separate meetings. Your association was represented by Bryan Rosenberg, Sarah Friede, Nancy Ferguson, and me. Peter Kolbe of Fidelity National Title (formerly with the NC Department of Insurance) and Rich Carlson representing ALTA were there to take the lead in the presentations on our behalf.

The first issue was a request for the Department to seek a technical correction to the definition of title insurance as defined in NCGS § 58-7-15(18). The current definition is: "Title Insurance, meaning insuring the owners of real property and chattels real and other persons lawfully interested therein against loss by reason of defective titles and encumbrances thereon **and** insuring the correctness of searches for all instruments, liens or charges affecting the title to that property..." (emphasis added)

This definition makes use of the conjunctive 'and,' meaning the policy arguably may be that title insurance needs to insure both the loss by reason of defective title and insure the correctness of the search including furnishing information relative thereto in order to be deemed title insurance. Although the Department had never interpreted as such,

an argument could be made that if one simply insured the correctness of a search by furnishing information related thereto, it is not title insurance. Your representatives requested the definition be changed to the conjunctive "or" in order to clarify that either prong of the definition, in and of itself, is title insurance. Further, it makes certain that "so called" title reports are indeed "title insurance" to the extent any promise to indemnify is stated.

The Department has informed us that they are not going to seek the technical correction requested. However, the attorney for the Department will issue a written opinion that the proper interpretation of the statute is that "title insurance" exists if either prong of the definition is met.

The next meeting was for the purpose of requesting the Department to reassess their approval of Zurich's Mortgage Protection Policy. This policy slipped in under the radar in 2002, as Peter Kolbe, then General Counsel with the Department of Insurance, opined that the policy was not title insurance. In August 2004, your representatives requested the Department revisit the decision. Again the Department concluded the policy was not title insurance.

Peter Kolbe, now with Fidelity National Title, convinced the Department's Barbara Burke to revisit the issue with another full hearing on the matter. Rich Carlson, who is hired by ALTA to combat these policies across the country, presented a power point presentation systematically outlining the definition of title insurance and specifically showing

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Report from ALTA Federal Conference

By Sarah M. Friede, Senior Underwriter & Legal Counsel, Statewide Title, Inc.

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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The American Land Title Association (ALTA) held its annual Federal Conference in Washington, D.C., March 6-9, 2005. The first day of the conference was broken down into meetings for state

officers, agent members, and the legislative committee. Officers from various states' executive committees met and discussed building membership, professional certification programs, and a variety of other issues that are common to the states. The overwhelming consensus was that departments of insurance do not understand title insurance and do not want to invest much time on the industry because title insurance generates less than one percent of the overall insurance premiums regulated by the states. Professional certification programs have been adopted in various states to give title professionals some credibility and respect, as well as to help distinguish those who have experience and expertise from those lay closers who do nothing to benefit the industry or consumers. The legislative committee meeting, which was open to all members, discussed GSE reform with a senior aide to Senator Dole and discussed the SMART Act, which proposes a federal charter for insurance regulation, with senior aides for representatives supporting the Act.

Two days of substantive programming covered a wide range of hot topics affecting the title industry nationwide. Experts in their fields addressed uniform closing instructions, GSE reform, state-based regulation of insurance (versus the federal charter proposed by the SMART Act), the newest IRS Revenue Procedure regarding §1031 exchanges, RESPA reform and enforcement, and mortgage fraud.

The hottest topic was the captive insurance investigation underway in Colorado. Erin Toll, Deputy Commissioner of Compliance with the Colorado Division of Insurance, presented facts about the reinsurance arrangements as well as the investigation. Reinsurance as it is used in Colorado refers to the premium split between underwriters and title companies affiliated with builders, developers, or realtors. The Insurance Commissioner does not consider the premium split to be the same as the typical underwriter/agent split because of the percentage of the split. According to Toll, the split with captive companies had no legitimate business purpose, was not proportionate to the risk of loss split, and was used only in a captive, or affiliated, setting. A more thorough synopsis of Toll's presentation can be found on the RESPA News website, at http://www.respareform.com/pub/headline_news/140569-1.html. Although Toll stated that no claims had ever been paid by any of the captive companies, at least one executive from an underwriter was heard afterwards saying that Colorado's inquiries into reinsurance practices had not asked for claims information, and he therefore disputed the accuracy of her presentation. Toll also told ALTA that affiliated business arrangements (AfBAs) are second on the priority list for the NAIC Title Insurance Working Group, and will be taken up as soon as the captive reinsurance investigations wind down. In Toll's opinion, punishing underwriters who agree to the builders' and developers' schemes is unfair and useless unless the persons pushing the captive arrangements are punished as well. Toll has had at least one meeting with Ivy Jackson, HUD's RESPA and Interstate Land Sales Director, about that issue, and HUD has indicated its desire to shut down those AfBAs that do not legitimately provide settlement services but rather exist as "sham" companies that provide kickbacks.

2005 convention heads to Asheville



NCLTA will be returning to the venerable Grove Park Inn Resort & Spa (<http://www.grovesparkinn.com/>), one of the Association's most popular convention destinations, for the 2005 annual convention, September 15-17. Plans are well under way with a slate of program speakers including return of favorite presenters Margaret Shea Burnham and Patrick Hetrick. ALTA President-elect Randy Yeager, president and CEO of Old Republic

Title, Minneapolis, will provide the national association update, while Christopher Vaughan of Carruthers & Roth in Greensboro will focus on Real Property Section issues. At press time, Friede was seeking to coordinate another underwriter panel and to locate a speaker on fraud investigation.

With majestic mountain views and its Arts-and-Craft décor, The Grove Park Inn continues to charm its guests with four-diamond amenities and service. It offers a 50,000 square foot Sports Complex, a Don Ross-designed golf course, and a world-class spa. *Conde-Nast Traveler* has named The Grove Park Inn Resort & Spa to its 2005 Gold List Reserve.

Nestled into Sunset Mountain overlooking downtown Asheville (<http://www.asheville.com/>), the area has a lot to offer: including the enormous and elegant Biltmore Estate, Chimney Rock Park, white-water rafting, the Cherokee Indian Reservation, the Blue Ridge Parkway, the Folk Art Center, and the Great Smoky Mountains National Park. <http://www.exploreasheville.com/>



Around the State

Three title agencies have recently announced name changes:

Charles B. Davis has announced that Commonwealth Land Title Company of NC has changed its name to **Attorneys Title Insurance Agency, Inc.** Headquartered in Raleigh, the agency has branch offices in Charlotte, Winston-Salem, Asheville, Cary, Greensboro, Wilmington, and Raleigh. Attorneys Title will be 25 years old in September.

ATI Title Company, LLC, will now be doing business as **Rels Title**. The agency's office in Goldsboro is managed by *Randall Sauls*.

Larry D. Johnson has announced that BB&T Title Insurance Services has changed its name to **Surety Land Title**. The agency is headquartered in Raleigh.

State regulators probing title industry use of payments in exchange for referrals

After many years of obscurity, the title industry is suddenly coming under the scrutiny of state regulators. During the National Association of Insurance Commissioners' March 12-13 quarterly meeting held in Salt Lake City, the normally quiet Title Insurance Working Group meeting overflowed with 150 regulators and industry officials. Led by the Colorado Department of Insurance, now over a dozen state Departments of Insurance have launched investigations into activities that might be RESPA violations, including paying kickbacks to home builders for customer referrals. For ongoing media coverage, visit the American Land Title Association's web page at <http://www.alta.org/advocacy/issue.cfm?newsCatID=26>.

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TSS Software Corporation



Legislative, budgetary concerns covered in February Executive Committee meeting

The Executive Committee of the Association met on February 16 in Raleigh. One of the primary items of business was the presentation of the 2004 year-end financial statement, reflecting a \$23,500 loss due primarily to The Boar's Head Inn room pick-up attrition penalty and loss of membership due to mergers and acquisitions, resulting in a "going concern" note from the independent CPA firm conducting the year-end financial review. Actions taken to help turn around the Association's financial picture included renegotiating the room block downward for the 2005 convention, soliciting advertising for the Association's publications, and conducting an Agency membership campaign—both directly to potential Agency members and indirectly through Underwriters.

The bylaws were reviewed to determine whether or not the membership category of "Agent" needs to be better defined, but the conclusion was that it did not need to be amended. Additional membership categories are being considered.

2005 Convention Chair Sarah Friede reported on speakers who had been con-

tacted for the program presentation, September 15-17, 2005, at The Grove Park Inn in Asheville.

Legislative Committee Chair Jay Hedgpeth presented a review of the proposed E-recording statute and the NC version of the Uniform Mortgage Satisfaction Act. In general the NCLTA Executive Committee supports the E-recording proposal, but is opposed to an e-journal requirement. The Executive Committee also supports the UMSA legislation with the exception of a title company qualifying as a satisfaction agent.

Representatives of NCLTA and the national title industry were scheduled to meet on February 22 at three separate times with the NC Department of Insurance (see "President's Message"). On March 30, the Land Records Task Force was slated to meet to discuss the proposed legislation on E-recording and notarization.

The next meeting of the Executive Committee is scheduled for Tuesday, May 17, at the Association's headquarters in Raleigh, beginning at 10:00 a.m.

Erratum

The address listed in the 2005-2006 Directory of Members for Attorney member Robert W. Porter was incorrect. The correct address is as follows:

Robert W. Porter
Well, Jenkins, Lucas
and Jenkins PLLC
155 Sunnynoll Court,
Ste 200
Winston-Salem NC
27106

We apologize for any inconvenience.

Nominations for Secretary sought

The 2005 Nominations Committee, chaired by Bryan Rosenberg, with members Christopher Burti and Gary Whaley, is seeking nominations for the position of Secretary on the Executive Committee, for the term beginning September 17, 2005. 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 Bryan Rosenberg, Fidelity National Title, 150 Fayetteville St. Mall, Ste 1140 (27601), P.O. Box 2209, Raleigh, NC 27602, Phone (919) 829-0200, Phone (800) 662-7729, Fax (919) 828-2885, Email: bryan.rosenberg@fnf.com to the other members of the Nominations Committee.



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Radian loses on Appeal after five attempts in California

Courtesy of ALTA E-News, March 30, 2005

On March 29, the California Court of Appeals issued its opinion in the case of Radian Guaranty, Inc., et al., v. Garamendi. The Court's opinion affirmed the judgment of a previous trial court and found that the undisclosed lien coverage provided in the Radian Lien Protection (RLP) product constitutes "title insurance" and that the RLP violates both mono-line statutes fully justifying the cease and desist order. Radian Guaranty has been trying to sell mortgage impairment insurance in California as an alternative to title insurance.

Last year, the California Insurance Commissioner, Garamendi, issued a cease-and-desist order against Radian on the grounds that its RLP product violated both the title insurance and mortgage guaranty mono-line statutes. Radian was blocked in its move to appeal the decision to an administrative law judge who upheld the Commissioner's cease-and-desist order. The Commissioner again decided to uphold his original order. Radian then filed a writ of mandate that was rejected by a trial court and upheld by the California Court of Appeals. Radian could have this decision reviewed by the California Supreme Court.

Convention Calendar

ALTA Tech Forum 2005

April 17-19, 2005
Portofino Bay Hotel at
Universal Studios
Orlando, FL
[www.alta.org/meetings/
techforum/index.cfm](http://www.alta.org/meetings/techforum/index.cfm)

**NCBA 2005
Real Property Section
Annual Convention**
May 6-7, 2005
The Greenbriar
White Sulphur Springs, WV
[realproperty.ncbar.org/
Calendar/
Calendar/default.aspx](http://realproperty.ncbar.org/Calendar/Calendar/default.aspx)

**NCLTA 2005
Annual Convention**
September 15-17, 2005
The Grove Park Inn
Asheville, NC
www.groveparkinn.com
www.asheville.com
www.exploreasheville.com

**ALTA 2005
Annual Convention**
October 5-8, 2005
New York Marriott Marquis
New York, NY
[www.alta.org/meetings/
annual/index.cfm](http://www.alta.org/meetings/annual/index.cfm)

**NCLTA 2006
Annual Convention**
September 14-16, 2006
Wild Dunes Resort
Isle of Palms, SC
www.wilddunes.com/

Welcome new members

At its February 16, 2005, meeting, the Executive Committee of the NC Land Title Association approved the following new Attorney members:

Sherrie R. Hodges
Sherrie R. Hodges
Attorney at Law, PLLC
401 E. Main St., Unit 3
P.O. Box 908
Jefferson, NC 28640
Ashe
Phone (336) 846-2511
Fax (336) 846-2514
Email: sherrieatty@skybest.com

John A. Turner
Turner & Yates, P.A.
136 N. Water St.
Boone, NC 28607
Watauga
Phone (828) 264-5900
Fax (828) 264-9767
Email: jhnturnr@bellsouth.net

Randall A. Underwood
Brooks, Pierce, McLendon,
Humphrey & Leonard, L.L.P.
2000 Renaissance Plaza
2300 N. Elm St.
P.O. Box 26000
Greensboro, NC 27401
Guilford
Phone (336) 373-8850, ext. 4122
Fax (336) 378-1001
Email: runderwood@brookspierce.com
Web: www.brookspierce.com

President's message

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how three Zurich endorsements provide coverage for defects in title.


Members of NCLTA felt that the staff from DOI were attentive and provided a fair hearing. Stewart Johnson is currently General Counsel for DOI—Peter Kolbe's replacement. Peter Kolbe recused himself from the meeting to avoid the appearance of conflict due to his prior work on this issue. As of the date of this article, we have not heard of any decision of the Department of Insurance.

After lunch we took a second shot at requesting the Department of Insurance submit an agency bill to allow a qualified indemnity for Insurance Companies to share information regarding fraudulent insurance acts. This is based on Florida Statute §626-989. Richard Kinn, the head DOI investigator, helped secure a second look at this statute. Everyone in the room acknowledged it would be good policy.

The two concerns raised by the Department were that (1) consumers need to know that information could be shared with other companies and (2) the possibilities of "black balling." Peter Kolbe pointed out that information can be shared now; it is simply that qualified indemnity does not exist now and that has a chilling effect on information sharing. The deterrents to black balling are both the possibility of bad faith

claims and the fact that the Department has the ability to bring an unfair and deceptive trade practice suit. Your representatives left the meeting feeling that we would likely have an agency bill proposed regarding the sharing of information among companies to prevent fraud from spreading throughout the industry. However, the DOI bills introduced did not include our request. Upon investigation, we have determined that the Department felt that they did not have time to "ferret out" all the consumer blacklisting concerns. The Department representatives indicated that they would not oppose a statute that we would have introduced. However, we have decided the chance of success would be improved if it came from the agency and have therefore decided to try to lay the groundwork for an attempt at legislation in 2007.

All-in-all, it was a good day's work, and I am most appreciative of all those taking their time to support these efforts.



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Sam Mann Award nominations sought

The Nominations Committee is seeking nominations for the Sam Mann Memorial Award. The purpose of this award is to recognize a new generation of leaders in the title industry. The award winner will demonstrate the special qualities of Sam Mann in terms of contributions, encouragement, and support of the title industry:

- Put people at ease, inclusive, and caring; willing to listen
- Approach life with wisdom, dignity, courage, and a sense of humor
- Dependable, honest, loyal, and trustworthy
- Willingly seek leadership opportunities

The award will honor a person new to the title industry, and will be presented at the annual convention.

The deadline for submission of nominations is April 29, 2005.

I hereby submit a nomination for the SAM MANN MEMORIAL AWARD for:

Nominee's Name: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Fax: _____

Email: _____

Number of Years Working in Title Industry: _____

Please attach a narrative of why you feel that individual demonstrates the qualities of Sam Mann, a biography or other summary of work history and contributions, reference letters, a photograph, and any other information you feel would be pertinent to the selection committee.

Signed by Nominator: _____

Date: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Fax: _____

Email: _____