



Carolina Update

NCLTA's Exclusive Report to its Members

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President's Message

Gary M. Whaley



Thank you to everyone for your support of the Association throughout the year. The Association accomplishes only as much as those who support it. It has been gratifying to know that those with experience have

stepped in to help advance our industry in North Carolina.

Bryan Rosenberg and Al Gardner have reviewed and revised the Preliminary Opinion on Title, NC Bar Association Form No. 1-P. This was last reviewed in 1989, also by Al Gardner and others. The Executive Committee intends to take formal action on the revision at its September 15 meeting so it can be presented to the Real Property Section of the North Carolina Bar Association at its October 2005 meeting. Thanks to Bryan and Al for completion of this task.

Ed Urban assisted in protecting our interest with regard to the revisions of the mechanics lien bill. A move was afoot to allow for prejudgment interest on a mechanics lien and to allow for perfecting the lien in bankruptcy court without notice in the local Clerk of Courts Office. Ed successfully negotiated the withdrawal of prejudgment interest on real property and making the proof of claim in bankruptcy subject to "notice of action" requirements set forth in the lien statute. We are grateful for Ed's willingness to continue to serve our Association.

Along the same line, there is evidence of the importance of making our views known to the General Assembly. An amendment to NCGS Chapter 46 was introduced that contained many short comings. The intent was to provide a cotenant a first right of refusal in a partition sale. Telephone calls and emails went to our members and members of the Bar who in turn wrote their representatives. The Bill was pulled by its sponsor. It helps to keep an eye out for these bills and for everyone to make their individual views known to the representatives.

There is now an update from past news stories. Jackie Darden responded to Rich Carlston's presentation about Zurich's Mortgage Protection Policy. "We are forwarding you a copy of the response we received from Zurich along with a copy of Deputy Commissioner Fuller's letter to the company. We have no further concerns at this point."

Finally, in order to serve the Association better, the Executive Committee emailed a survey the second week of June. The early returns are interesting. With a 33% response so far, there does not appear to be a consensus on the best way to meet our convention budget and expenses; however, nearly half of the respondents suggested we increase the registration fee by \$100 and 40% wanted to move the convention back to early August or to a less expensive place. Thirty percent liked the idea of meeting with another state land title association,

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Discussion continues on paralegal supervision

By Jeffrey I. Hrdlicka, Chicago Title Insurance Co

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The Ethics Committee of the NC State Bar and the Council of the Real Property Section of the NC Bar Association continue to discuss Proposed Ethics Opinion 2004 FEO 12. "The proposed opinion rules that a lawyer who is closing a real estate transaction may not use the services of a company that employs paralegals to perform the public records search on the title to the property." The proposed opinion relies upon and interprets 2002 FEO 9 and RPC 216. 2002 FEO 9 held that in delegating tasks to a nonlawyer, competent practice requires the lawyer to consider—among others matters—"the complexity of the transaction, the degree of difficulty of the task, and the training and ability of the nonlawyer." RPC 216 holds that "a lawyer may use the services of a nonlawyer independent contractor to search a title provided the nonlawyer is properly supervised." The proposed opinion states that "satisfying the competent representation is not possible if the nonlawyer who is performing the public records search, in order to provide information upon which the lawyer will base her opinion on title, is employed by an independent, organized entity

and is not, therefore, under the lawyer's direct authority and supervision."

The proposed opinion attempts recognize the inherent inability of a lawyer to supervise properly an independent contractor under certain conditions. Where a lawyer orders a title search through an organized entity that employs paralegals, the lawyer may not have a sufficient relationship and the control to supervise adequately the actual person performing the search. However, concerns have been raised that the proposed opinion is overly broad and may penalize paralegals who have formed business entities and still maintain the relationship needed for adequate supervision by a lawyer.

The Ethics Committee has asked the Real Property Council for input on the proposed opinion, including outlining the basic standards for supervision. Such an outline has proven to be a difficult task in past experiences. The Ethics Committee plans to discuss the proposed opinion at their July meeting.

2005 State Legislation Update

By Anne Winner, NCLTA Lobbyist

Background

Observers of the 2005 General Assembly have accused this legislature of inaction this Session. This is not true in the area of real property law. The NC Land Title Association has supported and opposed several bills that are of significant impact to the industry.

Bills of Interest that are Eligible for Ratification this Session

(Information current as of July 5, 2005.)

The Mortgage Satisfaction Act (SB 734): This bill rewrites Article 4 of Chapter 45 of the North Carolina General Statutes relating to the satisfaction of mortgages and deeds of trust. The bill is sponsored by Senator Julia Boseman (D-New Hanover).

NCLTA requested the bill as introduced be amended to exclude title insurance companies from serving as a satisfaction agent. The bill was amended as requested and passed the Senate prior to the crossover deadline of June 2, 2005. The bill was heard in the House Judiciary III Committee and received a favorable report on June 8, 2005. The bill passed second and third reading in the House on June 14, 2005, and will be sent back to the Senate for consideration of the House changes. The bill has been ratified and was signed by the Governor on June 29.

Real Property Electronic Recording Act (SB 671): This bill authorizes Register of Deeds to record documents electronically and establishes procedures to set standards for electronic recordation. The bill was recommended by the General Statutes Com-

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mission. The bill is sponsored by Senator Fletcher Hartsell (R-Cabarrus) who is a member of the General Statutes Commission.

This bill passed the Senate on May 5, 2005. The bill was referred to the House Judiciary IV Committee. This committee should consider the bill soon after the House passes their version of the budget.

Notary Public Act (SB 934): This bill originated by the Secretary of State rewrites the statutes related to notaries and integrates notary procedures for paper and electronic documents. Senator Hartsell (R-Cabarrus) is also the sponsor of this bill. He believes that this bill goes hand in hand with the Real Property Electronic Recording Act mentioned above. This bill received a favorable report from the Senate Judiciary II Committee and was re-referred to the Finance Committee. This bill includes a fee, and bills with fees must go to the Finance Committee. This bill still needs to go to the House for consideration.

Electronic Signature Under Rule 4 (HB 1434): This bill sets procedures for using an electronic signature for proof of service upon a person under Rule 4 of the Rules of Civil Procedure. This bill has passed the House and has been sent to the Senate for consideration.

Subordination Agreements/Registration Amendments (SB 667): This bill was recommended by the General Statutes Commission to validate certain subordination agreements and to clarify the priority of instruments registered in the Register of Deeds office. This bill has passed the Senate, has been reported favorably by the House Judiciary IV Committee, and calendared.

Deed Recording/Tax Certification for Certain Counties (HB 131): This bill adds four counties to those counties who are authorized to use tax certification to aid in the collection of delinquent property taxes. The additional counties are Johnston, Onslow, Surry and Robeson. This bill passed the House and the Senate and is awaiting signature.

Greene Deeds/Property Tax Certification (HB 1000): This bill is the same as the one above, but it only adds Greene County to the list of those counties that are authorized to use tax certification. This bill has passed the House and is in the Senate Finance Committee.

Enforcement Power of Attorney (HB 510):

This bill to encourage acceptance of powers of attorney has passed both the House and Senate. There has been concurrence on both House and Senate amended versions.

Bills of Interest No Longer Eligible this Session

Refusal Rights/Forced Public Partition Sale

(HB 1309): NCLTA opposed this bill that rewrites the public partition sales law. The bill faced much opposition and was pulled by the sponsor. This bill did not meet the crossover deadline, and therefore is not eligible during this biennium without a study committee or recommendation from the General Statutes Commission.

Partition Sales of Real Property (SB 963):

This bill that would amend the laws related to partition sales was not heard in the Senate prior to the crossover deadline and is not eligible this Session.

Register of Deeds/Tax Certification (SB 589):

This bill that would have taken the tax certification authorization statewide was opposed by NCLTA. The bill sponsor ultimately decided to simply add his county to the list of counties which are authorized. NCLTA did not oppose this move.

Personal Representative Selling Real Property

(SB 917): This bill would have amended the law with regard to the authority of personal representatives in disposing of real property of a decedent. This bill did not receive a favorable report from a Senate Committee so it is not eligible this Session.

Conclusion

The bills of interest to NCLTA are on track to be ratified this Session. NCLTA was also successful in stopping the bills that were of greatest concern to them. Rep. Skip Stam (R-Wake) and Senator Fletcher Hartsell (R-Cabarrus) have been particularly helpful to the Association this Session. Rep. Stam spearheaded the effort to keep the house partition sales bill from coming up for consideration.

To view the text of the bills mentioned or any other bills go to www.ncleg.net.

Around the State

The Hickory branch of **Chicago Title Insurance Company** has moved.

The new location of the office is:
225 4th Street, NW
Suite 220
Hickory, NC 28601

The mailing address is:
PO Box 2283
Hickory, 28603-2283
Phone (828) 328-4332
Fax (828) 328-3429

The Raleigh branch of **Chicago Title Insurance Company** has moved to new offices in Suite 570 of 150 Fayetteville St. Mall.

Mark Griffith is the new state counsel in that office. *Paula Wright* remains as office manager.

A message to lenders on Mortgage Impairment Insurance

Mortgage impairment insurance is being touted as an alternative to title insurance by property and casualty companies and other non-title insurers. Please take a moment to get all the facts before making a decision that could have serious repercussions to you and your borrowers.

The truth is, replacing title insurance with mortgage impairment products offered by non-title insurers means a considerable loss of protection to you, the lender, and indirectly, the consumer.

Here are some important points to consider:

- Mortgage impairment insurance that offers lien priority coverage is a form of title insurance, which by law can only be offered by licensed title insurers. Non-title insurers, such as property and casualty companies, lack historical underwriting experience for this kind of coverage, and are not subject to appropriate market regulation that, among other things, requires the establishment of a certain amount of funds in reserve to pay claims.
- Mortgage impairment policies do not rely on a title search. Instead, they require you, the lender, to meet certain requirements prior to coverage. These requirements typically include running a credit report on the borrower (called “red-lining”), and forcing the borrower to sign an affidavit stating there are no known liens against the property. If the borrower makes an error, they can unknowingly incur personal liability for fraud and/or misrepresentation under federal and state laws. And, because these products exclude known liens, you actually **lose** coverage if you obtain a title search.
- With mortgage impairment insurance, no search of the public record is performed and no correction of title defects takes place. Since title problems arise in **one out of every four** real estate transactions, this lack of discovery seriously undermines the integrity of public land records, and will result in higher costs and time delays on future transactions because these defects in the public record need to be corrected.
- Most mortgage impairment policies do not provide vesting insurance. Yet you rely on vesting information provided by the insurer to prepare your loan documents. If there is an error that renders the mortgage invalid, you will not be able to offset the loss with foreclosure proceeds because you cannot foreclose an invalid mortgage.

“Undisclosed lien” coverage is only part of the protection provided by a true loan title insurance policy – coverage that is not included with mortgage impairment insurance. A loan title policy insures:

- The validity of the mortgage
- The enforceability of the mortgage
- The assignment of the mortgage
- Vesting
- The duty to defend

Do the necessary research to enable you to make good choices for you and your customers. Always insist on title insurance coverage from a licensed title insurance provider.

Alter your Attitude in Asheville!

Convention returns to Grove Park Inn



2005 Annual Convention Chair Sarah Friede has planned a jam-packed **educational program** for NCLTA's annual convention, September 15-17. Returning to the ever-popular **Grove Park Inn**, the convention will contain the usual updates and highlights as well as continuing the underwriting panel from last year and adding a claims panel. A solid 6.25 hours of CLE has been approved by the CLE Board.

Several popular speakers will return to the podium, including Margaret Shea Burnham speaking on contracts, Pat Hetrick's case law update, and claims attorneys Jim Pendergrass and Rob McNeill. Rande K. Yeager, president of Old Republic Title Insurance Group of Minneapolis, will present the latest news from ALTA, while Chris

Vaughn will inform attendees about developments from the Real Property Section of the NC Bar Association. New to the convention program will be Alan B. Powell, of Roberson, Haworth & Reese in High Point, joining the claims panel, moderated by Jon Parce, Claims Committee chair, and Bill Bradbury from the NC Department of Insurance's Investigations Unit, presenting a program on "Fraud Investigations." This year's underwriting panel will feature Jane Barkley, Hunter Meacham, Steve Jones, and Al Gardner, moderated by Sarah Friede. The

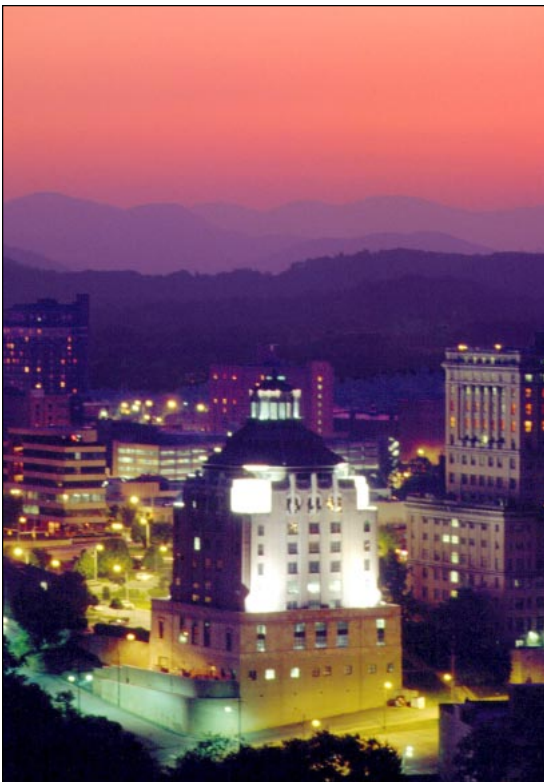


educational session continental breakfasts and refreshment breaks are sponsored by SoftPro Corporation and Horack, Talley, Pharr, and Lowdnes, PA.

Activities in the Asheville area abound. Delegates may participate in the Friday afternoon golf tournament, play tennis, join a group white water rafting on the French Broad River on Saturday afternoon, congregate around the indoor or outdoor pools, relax at the spa, hike the mountains, meander among the downtown shops, visit the Blue Ridge Parkway, or enjoy the vista from the Sunset Terrace or Main Lobby Lounge.

On Saturday evening, in anticipation of late returns from the afternoon rafting trip, we are foregoing the standard President's Reception at the hotel for a later group cocktail reception (7:30 pm) and dinner (8:00 pm) at **The Marketplace restaurant** in downtown Asheville instead.

Due to increasingly strict attrition clauses being enforced by hotels, the Association has a limited block of sleeping rooms available at the Grove Park Inn at a rate of \$219 per night plus lodging tax. The cut-off date for making reservations is **Monday, August 15**; however, previous experience has shown that the Resort sells its rooms out quickly, so you are urged to **make your reservation** as soon as possible if you wish to stay on the Resort property. Registration materials are expected to be mailed in mid-July with an early bird rate deadline of Wednesday, August 31. Make your plans now to join us in Asheville September 15-17!





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State legislation and convention top May Executive Committee discussions

During the May 17 meeting of the NCLTA Executive Committee, Legislative Committee Chair Jay Hedgpeth presented a comprehensive report, based primarily on information from the Association's lobbyist, Anne Winner on various bills that had been introduced into the General Assembly. The legislative crossover date of June 2 was approaching, hence quite a few bills were still being introduced. (See related article on page 2.) The bills receiving the most discussion were revisions proposed to Chapter 44A by the Construction Law Section of the NC Bar Association (S.887), Partition Sales of Real Property (S.963; H.1309), Enforcement of Power of Attorney (H.510), and Mortgage Satisfaction (S734).

Convention Chair Sarah Friede reported on speakers and topics selected for the annual convention, September 15-17, at the Grove Park Inn and Resort in Asheville. Claims Committee Chair Jon Parce agreed to organize a panel presentation for the convention. (See related article on page 5.)

The Executive Committee considered a draft "message to lenders" from Rich Carlson, consultant to ALTA. (See box on page 4.)

Forms Committee Chair Bryan Rosenberg reported that the committee members have identified approximately 20 items to change on Forms 1-P and 1-F. NCLTA will draft its changes, approve them during the September 15 Executive Committee meeting, and present them to the Real Property Section joint forms committee for its October meeting.

Jeff Hrdlicka, NCLTA liaison to the Land Records Task Force, indicated that, in addition to legislative topics, the Task Force discussed Notary Act amendments, e-recording, mortgage fraud, identity theft act, and power of sale. The Task Force is scheduled to meet again on August 9 at Attorney Clark Brewer's office in Raleigh.

The Executive Committee approved preparation of a survey of title company members regarding member benefits.

Convention Calendar

NCLTA 2005

Annual Convention

September 15-17, 2005
The Grove Park Inn
Asheville, NC

www.nclta.org/convention.html

www.grovesparkinn.com

www.asheville.com

www.exploreasheville.com

ALTA 2005

Annual Convention

October 6-9, 2005
New York Marriott Marquis
New York, NY

www.alta.org/meetings/annual/index.cfm

ALTA 2006

Tech Forum

April 30 - May 2, 2006
Mandalay Bay Resort & Casino
Las Vegas, NV

NCLTA 2006

Annual Convention

September 14-16, 2006
Wild Dunes Resort
Isle of Palms, SC

www.wilddunes.com

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TSS Software Corporation



Welcome New Members!

At its May 17, 2005, meeting the Executive Committee of NCLTA approved the following new members:

Underwriter

Commerce Title Insurance Co. (U)

Christy Tabor

2728 N. Harwood, 4th Floor

PO Box 199000

Dallas, TX 75219

(214) 981-6379 • 888-372-6963

Fax: (214) 981-6380

Email: ctabor@titlemail.com

Agency

Chapel Hill Title & Abstract Co., Inc. (A)

***Nicholas W. Page**

James J. Clifford

210 North Columbia Street

Chapel Hill, NC 27514

(919) 942-6024

Fax: (919) 933-8088

Email: nwpage@intrex.net

Associate Member

Tatiana Parker

The Title Report

3046 Brecksville Rd., Suite 4D

Richfield, OH 44286

(330) 659-6101, ext. 6121

Fax: (330) 659-6102

Email: tparker@thetitlereport.com

www.thetitlereport.com

The Executive Committee also ratified its earlier email approval of new Agency Member:

Beach Title Services, LLC (A)

Matt Spencer

5104 The Woods Rd., PO Box 35

Kitty Hawk, NC 27949

Dare

(252) 202-8452

Fax (252) 449-5061

Email: beachtitle@earthlink.net

The Executive Committee also welcomed back Attorney Member:

John G. Lewis, Jr.

Lewis and Patterson, Partnership

PO Box 786

Statesville, NC 28687

(704) 878-6413

Fax (704) 871-2813

State Insurance Standardization (SMART Act) heats up

From ALTA e-news

The move towards state-based regulatory reform is heating up. You may have heard about the State Modernization & Regulatory Transparency Act Discussion Draft, commonly referred to as the SMART Act Discussion Draft. The SMART Act is a proposal to standardize, at the state level, such items as market conduct exams and insurer licensing. ALTA is evaluating each aspect of the proposal to see how it affects our industry, and has sought to have title insurance exempt from this proposal. The House Financial Services Committee staff have released a SMART Act review schedule, indicating when they will review the various "Titles" (or sections) of the Act. ALTA is submitting comments on each Title outlining the industry's concerns. Information on the SMART Act developments are posted to the ALTA Web site. To see the ALTA comments, Discussion Draft, or review schedule, go to www.alta.org/advocacy/issue.cfm?newsCatID=27.

President's Message

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and 37% suggested we move to meet one day or with the Real Property Section meeting. (Now, we can see why the Executive Committee was having a dilemma over this issue!)

In analyzing the importance of the function of NCLTA, the Government Relations categories (lobbying and regulatory) have far outdistanced any other item listed on the survey. There also appears to be support for developing title agent licensing study courses and certification for non-attorney staff members. This sounds like another opportunity for more broad-based involvement in the Association's activities. Volunteers?