



Carolina Update

NCLTA's Exclusive Report to its Members

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President's Message

Jeffrey I. Hrdlicka



A recent edition (November 13, 2006) of *Forbes Magazine* included an article on the title insurance industry. Unfortunately, the article chose to portray our industry as an "insurance racket" and questioned the value

of a title insurance policy. The good news is that anyone with the slightest knowledge regarding title insurance will immediately recognize that the article was inaccurate and very misleading. In fact, ALTA responded with a letter that addresses several of the inaccuracies found in the article. The article can be found at www.alta.org.

The bad news is that not many people outside of the industry are truly familiar with our product. As a result such attacks can leave our industry with a black eye. In addition, there are alternative products (mortgage impairment) which like to criticize title insurance. One can only assume that the arguments in the article will be used by those offering alternative title products. Our ability to inform consumers and legislators about the truth concerning title insurance is essential to protecting our product. Please take a few minutes to read the ALTA response to the *Forbes* article.

The truth is that a title insurance policy is a valuable product that offers consumers protection for what is probably their greatest investment. It is a product that is designed to last a long period of time. Those who criticize title insurance fail to realize the

importance of this and what is required create a secure, long term policy. The use of a "risk elimination" form of insurance, rather than "risk assumption" (casualty) and the need for a monoline insurer both enable the title policy to be an effective and reliable product. A recent ALTA study found that one out of three title searches reveal a title problem. Monoline insurance helps assure that a title company will be around to handle claims.

Risk elimination and monoline are statutorily required to issue a title policy in North Carolina. Alternative products, such as mortgage impairment products, take a risk assumption approach and are usually offered by multiline insurers. By not complying with title insurance statutes these products place the uniformed consumer at risk.

We are currently monitoring the industry for products which do not comply with title insurance statutes. In one case, we have contacted the Department of Insurance regarding such a product and hope to meet with DOI representatives. The importance of requiring products that offer title insurance coverage to comply with title insurance laws cannot be stressed enough.

In other matters, we are pleased to announce that David Ferrell of Vandevanter Black, LLC, in Raleigh has been retained as the lobbyist for the NCLTA. David has a background as a real property practitioner

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Highlights of the 2006 ALTA Loan and Owner's Policies

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The new ALTA generic forms were submitted to the North Carolina Department of Insurance by the NCLTA and were approved effective November 7, 2006. While numerous changes were made to the policies, many were made simply for the sake of clarity. There are, however, substantial changes to the coverage provided as well.

The 2006 policies contain much more detailed definitions of the critical terms used in the policies. The definition of the "Insured" is expanded not only to clarify the policy but to also extend coverage to persons and entities not previously recognized as insured. The Loan policy now also contains a definition of "Indebtedness," which extends greater coverage than the 1992 policy. The Loan and Owner's policies also provide for an increase in the amount of insurance in certain claim situations. In keeping with the mortgage industry trends toward paperless lending, the policies recognize the insurability of mortgages evidenced by electronic means.

Definitions: *Insured*

The new Loan and Owner's policies better define the "Insured," explicitly extending coverage to some successors in interest.

While the 1992 Loan policy insured successors of the insured named in Exhibit A of the Policy, the new Loan Policy specifically sets out the circumstances under which a successor of the lender is also insured. The new policy also includes "the person or Entity who has 'control' of the 'transferable record,' if the Indebtedness is evidenced by a 'transferable record,' as these terms are defined by applicable electronic transactions law" to address situations where the lender has made use of electronic means for establishing the indebtedness.

The Owner's policy also has an expanded definition of the "Insured." In the 1992 policy, the insured was simply defined as the person or entity named in Schedule A and successors in interest by operation of law such as heirs, devisees, personal representatives, or corporate or fiduciary succes-

sors. The 2006 Policy sets out the type of successors that are insureds. This includes:

"a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

- (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
- (2) if the grantee wholly owns the named Insured,
- (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes."

The new language automatically provides coverage, for instance, in the common occurrence of when an individual acquires property and subsequently conveys the interest to her wholly owned corporation or when a corporation conveys the properties between wholly owned parent and sister companies.

Definitions: *Indebtedness*

The new policy specifically defines "Indebtedness," which is the sum of:

1. the amount of the principal disbursed as of Date of Policy;
2. the amount of the principal disbursed subsequent to Date of Policy;
3. construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
4. interest on the loan;
5. prepayment premiums, exit fees, and other similar fees or penalties allowed by law;

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Highlights of the 2006 ALTA Loan and Owner's Policies

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6. the expenses of foreclosure and any other costs of enforcement;
7. the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
8. the amounts to pay taxes and insurance; and
9. the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

The new language makes clear the inclusion of post-policy disbursements, including construction advances. It also includes various penalties and exit fees if they are valid under applicable law.

Increase in Coverage Amount

Another major change in the 2006 Loan and Owner's policies is the increase of insurance amount when the insurer elects to prosecute or defend a claim and is unsuccessful in the litigation. In such a case, the amount of insurance is increased by ten percent (10%). Further, the Insured has the right to elect to have the loss or damage determined as of the date of the original claim or at the date of its settlement.

Additional Items of Note

The 2006 policies also provide coverage against matters arising in the time gap between closing and recording, except for certain tax matters; police power losses in instances where notices of violation or of enforcement are recorded in the land records; preferences caused by delayed recording or failure of recording to provide notice and express coverage for defense against right of access claims.

The Loan policy no longer contains the non-cumulative liability recovery limitation for junior mortgages. The coinsurance clause and apportionment clauses are no longer contained in the Owner's policy.

Welcome New Members

At its October 25 meeting, the Executive Committee approved the following new members:

Attorneys

John W. Bowers

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Email: kgallimore@wehwlaw.com

IRS Changes Seller Certification for No Reporting on Sale or Exchange of Principal Residence

In a bulletin issued January 22, 2007, the Internal Revenue Service has revised the acceptable form for the written assurances (certification) that a real estate reporting person must obtain from a seller of a principal residence to except the sale or exchange of such principal residence from the information reporting requirements for real estate transactions under § 6045(e)(5) of the IRS Code. This procedure supercedes Rev.Proc. 98-20, 98-1 C.B. 549.

Please see the following memorandum for more details:
www.alta.org/images/PDF/2007-irs.pdf



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Closing and Title Software Solutions

2007 Financial matters, lobbyist headline October Executive Committee meeting

The new Executive Committee of the NC Land Title Association met on October 25 in Raleigh to consider the 2007 budget, dues, and other financial matters, as well as to interview four potential lobbyists for the forthcoming legislative session.

The Association was expected to end the 2006 fiscal year with at least \$12,000 in net revenues over expenditures, credited to the large convention turnout and to the many sponsoring vendors and law firms who participated as a result of Debbie Brittain's persuasiveness as Chair of the Sponsorship Committee. With that positive financial outlook, the Executive Committee voted to keep 2007 dues at the same level as 2006. The Executive Committee also pledged to raise \$7000 in joint sponsorship among its member title companies for the 2007 Real Property Section Convention and voted to hire Joyce and Company, CPAs, to conduct a year-end audit.

President Jeff Hrdlicka reported on his attendance at the American Land Title Association annual convention in San Francisco. He also made committee appointments.

Initial discussion was held about activities to celebrate NCLTA's upcoming 30th anniversary and plans for the 2007 annual convention at Mid-Pines Resort in Southern Pines, August 8-11.

Executive Director Penney De Pas summarized what she had recently learned about the new "Lobbying and Ethics Law" that would go into effect on January 1, 2007, and how it might impact NCLTA operations in terms of increased staff time for reporting lobbying expenditures and stricter guidelines for legislative alerts appearing on the Association's web site.

After interviewing lobbyist candidates, the Executive Committee members tabled their decision until further information could be gathered about two of the candidates and a later conference call was held in November to select the Association's choice. (See related article on page 7.)

The next meeting of the Executive Committee will be on Wednesday, February 15, 2007, in Raleigh at the Association's headquarters.

President's Message

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in addition to being a lobbyist. The Legislative Committee recently met with David to familiarize him with our agenda.

Finally, NCLTA will celebrate its 30th anniversary at this year's Annual Convention. The meeting will take place August 9-11 at Mid-Pines Resort in Southern Pines. Kim Rosenberg and the convention committee are preparing a great meeting and educational program. Mark your calendars to be with us for a terrific event!

Around the State

Kit Anderson has joined the Charlotte office of **Chicago Title Insurance**

Company as Local Underwriting Counsel. He was formerly an associate attorney with Homesley, Goodman & Wingo, PLLC in Mooresville, NC, practicing residential and commercial real estate.



A. Travis Ellis has formed his own firm:

Ellis & Skinner, PLLC
PO Box 275
Edenton, NC 27932
Telephone: (252) 482-5533
Real Estate Fax: (252) 482-7222
Email: tellis@ellis-skinner.com

Agency member **Statewide Title, Inc.**, has two new offices:

Sherri McCoy
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351 Sanford Dr. (28655)
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Phone (828) 437-7771
Phone (888) 913-0005
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Fax: (888) 913-0006
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90 Southside Ave., Ste. 250
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Phone (828) 254-3227
Phone (800) 280-1307
Fax: (828) 254-3282
Fax: (800) 249-1120
Email: debra@statewidetitle.com

30th Anniversary Convention beginning to take shape



Plans are underway for the 30th anniversary celebration for the North Carolina Land Title Association, which was formed in 1977 when the Carolinas Land Title Association split into the North Carolina and Palmetto associations, respectively. The association held its early annual meeting at Whispering Pines in the Southern Pines area, so it was obvious that the association should return to that area to celebrate its longevity. On August 8-11, the NCLTA 30th anniversary convention will be held at Mid-Pines Resort in Southern Pines. (Whispering Pines is not large enough for our conclave.)

Various companies are already pledging to NCLTA for sponsoring different activities, and the excitement for the program and additional anniversary activities is building. You won't want to miss it!

Convention Calendar

ALTA Federal Conference

March 6-7, 2007
TheWillard InterContinental
Washington, DC
www.alta.org/meetings/meeting.cfm?meeting=Fed2007

NCBA Real Property Section Annual Convention

April 20-21, 2007
Sheraton Hotel
New Bern, NC
[www.starwoodhotels.com/sheraton/
property/overview/index.html?propertyID=18](http://www.starwoodhotels.com/sheraton/property/overview/index.html?propertyID=18)
[http://realproperty.ncbar.org/
Calendar/Calendar/6103.aspx](http://realproperty.ncbar.org/Calendar/Calendar/6103.aspx)

ALTA Tech Forum

April 22-26, 2007
Hyatt Regency
Denver, CO
www.alta.org/meetings/techforum/index.cfm

NCLTA 2007 Annual Convention

****30th Anniversary****
August 8-11, 2007
Mid-Pines Resort
Southern Pines, NC
[www.pineneedles-midpines.com/
page/216-7383.htm](http://www.pineneedles-midpines.com/page/216-7383.htm)

ALTA 2007 Annual Convention

****100th Anniversary****
October 10-14, 2007
Chicago Hilton & Towers
Chicago, IL
[www.alta.org/meetings/
meeting.cfm?meeting=SAM2007Ann](http://www.alta.org/meetings/meeting.cfm?meeting=SAM2007Ann)

NCLTA 2008 Annual Convention

August 14-16, 2008
Grove Park Inn Resort & Spa
Asheville, NC
www.groveparkinn.com

NCLTA selects 2007-08 lobbyist

The Executive Committee of NC Land Title Association selected David P. Ferrell of Vandeventer Black, LLP, Raleigh, to serve as its lobbyist for the 2007-08 Session of the North Carolina General Assembly. Ferrell earned his Juris Doctorate from Campbell University School of Law in 1996 and his joint BA in political science and economics from the University of North Carolina at Chapel Hill in 1993. He has been registered as a lobbyist since 1997.

In 2001-2005, Ferrell served as chair of the Legislative Committee of the NC Bar Association's Young Lawyers Division and is now serving on the YLD Executive Committee. Prior to joining Vandeventer Black, LLC, in January 2002, he practiced law with the firm of Hafer, Caldwell & Ferrell, PA, in Raleigh. His practice areas include legislative representation and lobbying, administrative and regulatory law, real property and eminent domain, construction law, public utility law, business law, and civil litigation. In addition, he serves in leadership roles and is active in various legislative and lobbying associations and organizations as well as serving as legal counsel to non-profit organizations.

Title Agent Licensing Exam Study Guide now available

NC Land Title Association has recently published a 36-page compact disk version of study guide for the North Carolina title insurance agent licensing exam given by the NC Department of Insurance's testing agency.

One copy on CD of the Adobe Acrobat (PDF) file of the study guide will be sent in March to each main representative of each title company member underwriter or agency, courtesy of Attorneys Title, division of United General Title Insurance Company. In addition, attorney members will be sent a PDF version. The file is also mounted on the NCLTA web site, password protected, similar to the NCLTA Directory. (<http://www.nclta.org/StudyGuide2007/StudyGuideFinalVersion2007.pdf>)

Additional copies of the CD will be available for sale for \$10 plus sales tax for members and \$75 plus shipping, handling, and sales tax for non-members (total \$90).

The preparation of the study guide was spearheaded by a task force, chaired by Kim Rosenberg of Attorneys Title, and including Stacy Jacobs of The Title Company of North Carolina, Marc Garren of Investors Title Insurance Co., and Mark Griffith, formerly with Chicago Title Insurance Co. The following member companies contributed chapters to the Study Guide: Attorneys Title, Chicago Title, Fidelity National, First American, Investors Title, LandAmerica-Lawyers Title, Statewide Title, Stewart Title, and The Title Company of NC.

The study guide is expected to be updated annually with new information and legislation. It was also designed to be a handy reference tool for title company underwriting staff. Additional copies may be requested using the online order form (www.nclta.org/StudyGuideOrderForm2007.doc).

Annual membership renewals

Membership dues renewals for 2007 were mailed in late 2006 to all title company main representatives, attorney members, and associate member companies and individuals. If you did not receive an invoice, please contact NCLTA headquarters (phone (919) 861-5584, email info@nclta.org) for another copy.

If you do not renew, this is your last issue of *Carolina Update*.)

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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. Candidates will be considered annually by the Nominations Committee and those selected presented with a plaque at the annual meeting. The postmark deadline for nominations is April 30, 2007. Please submit your nominations to the NCLTA Nominations Committee, c/o NCLTA, 1500 Sunday Drive., Suite 102, Raleigh, NC 27607-5163, fax 919/787-4916, email: pdepas@firstpointresources.com, phone 919/787-5181.

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: _____