



Carolina Update

NCLTA's Exclusive Report to its Members

Contents

- 2**
Proposed NCCUSL
Uniform Mortgage
Satisfaction Act
- 3**
Finances,
committee
assignments
headline October
Executive
Committee meeting
- 3**
At press time ...
- 3**
Membership dues
renewals
- 5**
Insurance
Department
approves form filing
- 5**
Convention
calendar
- 5**
Around the state

President's message

By Gary M. Whaley



It is well documented that this crop of juniors on the Tar Heel Basketball team did not jell as a unit immediately. Specifically, Rashad McCants was perceived as being aloof and above the

rest of the team. Rumors had it that he did not necessarily enjoy group activities with his teammates.

However, it is a new year in Chapel Hill. The selfishness of the individuals has given way to cooperation. Everyone is running and passing to help the team progress. Reports are that all of the guys are at the Suttons Drug Store lunch counter joking and laughing together. Sure, even with harmony, there can be bumps in the road, but success is more likely with togetherness.

A trade association by its very nature is made up of competitors. These competitors come together to function for the common interest of each other. Everyone understands that differences of opinion will arise. When an action is not perceived as being in the common interest of the association, the one advocating such action needs to put aside personal desires to that of the association in order to maintain the strength and harmony of the association.

Our association is meeting resistance from the general counsel of the Department of Insurance on the Zurich policy. He insists it is not title insurance. There may be a new general counsel in 2005 and we need to hit this issue head on and together.

The Fraud Director for the Department of Insurance does not understand why the Florida Fraud statute is any different than our statute and does not seem to want to deal with analyzing or improving the sharing of information relating to insurance fraud among the insurance companies.

We need to be alert to a number of legislative issues. The potential list of possible legislative initiatives includes:

1. Reliable Payoff – Deed of Trust cancellation
2. Future Advance Statute amendments
3. Electronic recordation and revision of notary laws
4. Uniform Unincorporated Nonprofit Association Act
5. Ad valorem tax sales should not extinguish restrictions, easements that run with the land
6. Easement of Necessity – (model Florida statute)
7. Repeal spouse elective life estate, 29-30
8. HB 716 – clarify executors, power of sale
9. Revision of guardianship laws
10. Manufactured Housing clarification
11. Mechanics lien clarifications
12. Curative statutes – updated in foreclosure statute and other matters
13. Codify equitable subrogation
14. Foreclosures – constitutional issue regarding notification of junior lien holders. (Louisiana statute)
15. Notary Public Act (Ch. 10A) proposed changes

continued on page 6

Proposed NCCUSL Uniform Mortgage Satisfaction Act

By Nancy Short Ferguson, Chicago Title Insurance Co.

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 Uniform Mortgage Satisfaction Act, <http://www.law.upenn.edu/bll/ulc/umsa/Approvedfinal2004.htm>, in its final draft is the core for a North Carolina version, to be co-sponsored by the Real Property Section of the NC Bar Association and the NC Bankers Association. The goals of this uniform act are (1) to facilitate ease in obtaining record cancellation for all concerned (attorneys, lenders, registers), (2) to provide a mechanism for clearing the record of liens when lenders fail to do so, and (3) to provide penalties for lenders who fail to act responsibly. The North Carolina version would affect all properties, not just residential properties, and is integrated with our present cancellation methods (G.S. 45-37, G.S. 45-36.3, various cross-referencing and indexing statutes, among others), simplifying the process substantially.

The NCCUSL Act would provide for the following critical needs:

1. Mandatory written **reliable payoff** from the lender, without generic or undeterminable conditions. If not provided timely (max. 10 days), penalties and costs would attach. Lender is precluded from denying validity of payoff and right to release of lien if payment is made pursuant to written statement (though personal liability of obligor will remain).
2. Mandatory **lender cancellation** within 30 days or costs attach; penalties, court costs and attorneys, fees attach if not canceled after 30-day follow-up notice.
3. **Self-help cancellation** by satisfaction agent (attorney or title company) if not canceled within 30 days following payoff plus 30 days following follow-up notice. This self-help remedy can be applied retroactively to clear up residual paid but outstanding liens. This can be enforced not only by the original borrower but by subsequent landowners. However, the statute does not make this service mandatory upon an attorney or title company; that is a matter of contract with the landowner.
4. **Reinstatement** of erroneous cancellations, but protection of intervening third parties relying upon the clear record.
5. **Statutory forms** (other than notary and execution pursuant to local law) to simplify process and have consistent process in all states adopting the Act.
6. **No entry of satisfaction** by the Register of Deeds will be applicable. The Register of Deeds must simply record if received. Indexing statutes must be adapted as well. However, the review and determination of compliance and validity of this, as any other recorded instrument, will be a matter of review and opinion by the attorney.
7. The Act is **not the exclusive remedy**, and potential for other contractual, criminal, RESPA, deceptive trade practices, class action or other remedies will remain.
8. **Penalty levels** will be determined by the General Assembly, state-by-state.
9. Further NCCUSL action is anticipated regarding the proposed **“one-touch” cancellation** – cancellation statement filed by the closing attorney at the closing, based on written payoff from lender paid at the closing.

The NC proposal would also simplify the means of cancellation under G.S. 45-37, retaining exhibition, trustee appearance, bearer and 10-year provisions, but modifying the other provisions to include only (1) trustee’s satisfaction (a simplified notice of satisfaction), (2) secured creditor satisfaction (either certificate of satisfaction or the above new form), and (3) satisfaction agent’s affidavit of satisfaction (the above “self-help” provision).

Any questions or comments should be directed to Nancy Ferguson, Nancy.Ferguson@ctt.com or 336-665-1314.

Finances, committee assignments headline October Executive Committee meeting

With a year-end shortfall of \$12,000, consisting largely of a convention sleeping room rate attrition penalty of \$8,600 and shortfalls in both dues and sponsorship income, during its the October 16 meeting, Executive Committee proposed dues increases to agent and branch dues for 2005. (Underwriter dues had already been increased for 2004.) Ideas for membership development were discussed and plans made to review the room blocks and catering obligations for the 2005 and 2006 annual conventions.

The Executive Committee approved retaining Anne Winner as its lobbyist for the 2005 Long Session and developed a special assessment schedule based upon 10 underwriters and 10 agents. Major legislative initiatives for the coming year include a joint legislative amendment to Chapter 28A for sale of personal property by personal representative, two uniform acts (Mortgage Satisfaction and e-Recording), and future advances.

Reporting on his attendance at the American Land Title Association convention where he facilitated a round-table discussion among small state title association leaders, President Gary Whaley noted that NCLTA is "light years ahead" in its operations. The Executive Committee approved a five percent increase in its management fee.

In the coming year, the association will be working on a plan to present to the Department of Insurance concerning continuing education for licensed title agents, continuing to assist the Insurance Department with regard to identifying mortgage impairment or other insurance products cloaked as title insurance, and a review of the bylaws to ascertain whether they are still applicable to changes in the industry.

Jon Parce was appointed by President Whaley to head a "Claims Committee" to serve as a conduit for education and communication about specific, common issues and problems in the marketplace (without forming any agreement on how to approach them jointly or any discussion of active litigation). Suggestions included a format similar to ALTA's Title Counsel national case review and including a claims case in each newsletter. Jeff Hrdlicka was appointed the association's liaison to the Land Records Task Force.

Staff reported on the federal CAN-SPAM and faxing issues raised by the FTC and the FCC and how it impacts the association's communication with its members. The next meeting of the Executive Committee is scheduled for February 16 in Raleigh.

Membership dues renewals


The 2005 dues renewal invoices were mailed to the Main Representatives of each Title Company member, as well as all Attorney and Associate members, on Friday, December 17, 2004. If you have not yet received your dues invoice, please contact the NCLTA office for a second copy (919/861-5584 or mbrship@nclta.org). Membership renewals were due on December 31, 2004.

At press time ...

On Thursday, December 23, 2004, HUD published its Interim Rule in the *Federal Register*, Vol 69, No. 246, to address prohibiting property flipping in HUD's Single Family Mortgage Insurance Programs. A copy of the Interim Rule is available at: <http://www.alta.org/govt/issues/04/69fr77114.pdf>

Former HUD Secretary and current U.S. Senator from Florida, Mel Martinez has been named to the Senate Banking, Housing and Urban Affairs Committee, raising concerns that Martinez, a RESPA reform advocate while at HUD, might push his RESPA agenda from within the Senate Banking Committee this time.

Dr. Nelson R. Lipshutz, president of Regulatory research Corporation, has prepared a white paper for the American Land Title Association defending the monoline statutes enacted during the Great Depression in the U.S. An executive summary and the entire paper are available at <http://www.alta.org/mortgage/MonolineStudy0105.pdf>.



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Insurance Department approves form filing

Several new ALTA endorsements and the Short Form Commitment were approved for use in North Carolina by NCLTA title company members, effective on or after August 31, 2004. The forms approved were:

- ALTA Endorsement Form 17.1
<http://www.alta.org/forms/Endorse17.1.pdf> (Indirect Access and Entry) (87kb PDF)
- Short Form Commitment
<http://www.alta.org/forms/ShortFormComm.pdf> (125kb PDF)
- Standard ALTA Incorporation Provision for all ALTA Endorsements
<http://www.alta.org/forms/IncorpProv.pdf> (68kb PDF)
- ALTA Endorsement Form 20 (First Loss-Multiple Parcel Transactions)
<http://www.alta.org/forms/Endorse20.pdf> (79kb PDF)
- ALTA Endorsement Form 21 (Creditors' Rights)
<http://www.alta.org/forms/Endorse21.pdf> (68kb PDF)

Around the state

LandAmerica Financial Group, Inc., has appointed *L. Hunter Meacham, Jr.*, as Vice President and State Manager for North Carolina. In this position, Meacham will oversee all agency and approved attorney operations in the state for both the Lawyers Title and Commonwealth Land Title brands. He is based in Charlotte in the former Lawyers Title office.

Convention calendar

ALTA 2005 Federal Conference

March 6-9, 2005

Willard Intercontinental Hotel
1401 Pennsylvania Avenue, NW
Washington, DC

<http://www.alta.org/meetings/federal/index.cfm>

ALTA Tech Forum 2005

April 17-19, 2005

Portofino Bay Hotel at Universal Studios
Orlando, FL

<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

<http://realproperty.ncbar.org/Calendar/Calendar/default.aspx>

NCLTA 2005 Annual Convention

September 15-17, 2005

The Grove Park Inn
Asheville, NC

<http://www.groveparkinn.com/>

<http://www.asheville.com/>

<http://www.exploreasheville.com/>

ALTA 2005 Annual Convention

October 6-9, 2005

New York Marriott Marquis
New York, NY

<http://www.alta.org/meetings/annual/index.cfm>

NCLTA 2006 Annual Convention

September 14-16, 2006

Wild Dunes Resort
Isle of Palms, SC

<http://www.wilddunes.com/>



Asheville convention plans underway

Plans are in progress for the 2005 NCLTA annual convention to be held September 15-17 at the Grove Park Inn, Asheville, NC. Sarah Friede, convention chair, has already confirmed several speakers, including Rande Yeager of Old Republic Title Insurance Company as the ALTA representative, Christopher Vaughan of Carruthers and Roth in Greensboro as the Real Property Section representative, Pat Hetrick for a case law update, and Margaret Shea Burnham of Nexsen Pruet Adams Kleemeier in Greensboro. Other topics under consideration are mortgage fraud, RESPA reform, and mortgage impairment.

Please mark your calendars and plan to attend the NCLTA convention this autumn in Asheville!

President's message

continued from page 1

Everyone needs to also be alert to the fact that there is a shortfall in the current budget adopted by the Board. We need new members. Whenever new agents are approved, please take the time to tell them about NCLTA and provide them with information to join our association.

There is plenty to accomplish this year for a voluntary organization and it will benefit us all to focus on all of these issues together. Together we can get credited with an assist, but apart it will surely be a turnover.

FIFTY states. THOUSANDS of members. ONE voice.
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The title industry has recently been challenged by potentially harmful RESPA reform, threats from mortgage impairment products, and much more. The American Land Title Association was a major force in securing victories for our industry on these issues.

Now, we need to continue to show the strength of the title industry to members of Congress. You can do your part by joining ALTA today. By combining the power of corporate members representing hundreds of thousands of individuals, we can achieve our goals. Your membership in your state land title association is vital, but our national organization can help all of us speak with a clear and united voice in the halls of government.

One of the immediate benefits you'll gain through ALTA membership is your free copy of the Title Industry Marketing Kit. Your kit will contain a video, brochures, ads, and articles to help you communicate our industry's consistent messages with your local lenders, real estate professionals, builders, and consumers—your tools to share information about the true value of title insurance. Add your voice to our national efforts through your involvement with ALTA. Contact Alice Baldwin at 1-800-787-2582 or alice_balwin@alta.org for more information.

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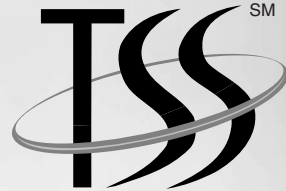
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