



# Carolina Update

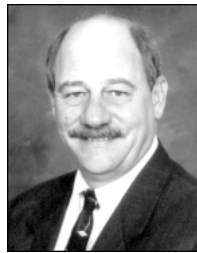
*NCLTA's Exclusive Report to its Members*

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## President's Message

*Christopher L. Burti*



### Year's End

The calendar year is ending as these words are set to print. At this time, as individuals, our thoughts often tend to be bent upon reflections of the past year's challenges met and unmet, its victories and perhaps defeats. We consider our successes as well as goals left unfulfilled. On the cusp of the calendar, we also begin looking forward and start setting goals for the coming year. For the North Carolina Land Title Association, we are still in the middle of our administrative year. In the coming weeks we face many challenging tasks.

We embark upon a new legislative session at the end of January. In this session, we expect the Legislature to be focused primarily on the budgetary issues facing our State. On the other hand, our organization expects to be concerned with legislative issues on two fronts that very well may be of little interest to the majority of our representatives in Raleigh. Through our Legislative Committee, we are endeavoring to strengthen the protection our system of land records affords the citizens of North Carolina. We will be working to promulgate amendments and new legislation that will resolve the issues presented by simultaneous recording, by judicially imposed requirements for subordination, the difficulties in securing reliable payoff information, and problems with getting mortgages canceled. There have been efforts pending to clarify and codify the power of a

personal representative to sell real property of a decedent without court order. There are new objections to proposals that have been worked and reworked in order to develop acceptable legislation resolving conflicts in this area. These will need to be addressed and overcome. Mobile home legislation still needs technical correction. A comprehensive new Notary Act has been proposed that contains provisions that are unworkable in the context of existing real property practice and that attempts to address problems that do not really exist in North Carolina. This legislation will be promulgated by the North Carolina Secretary of State and supported by the considerable influence of that office.

The second front that we shall face is, at present, purely speculative. Our organization has been very effective in staving off the incursions of multi-line insurance companies attempting to implement mortgage impairment substitutes for traditional title insurance in North Carolina. It would be an extreme example of naiveté for us not to anticipate a flanking maneuver in the Legislature. The analogy to military strategy is not inappropriate. The attack, as it were, will not be a frontal assault announced with fanfare and trumpets. More likely, it will be camouflaged by burying it in an amendment to a completely unrelated Bill. In either case, it will be vigorously pushed and promoted as a benefit to the consumer. Unsupportable representations will continue to be made touting chimerical benefits that disappear in the cold light of objective analysis. If we are

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# House Bill 760 (Ratified) – In Part:

## Amend the Title Insurance Reserve Laws to Enhance Insolvency Protection (10/2/02)

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### North Carolina Land Title Association

1500 Sunday Drive  
Suite 102  
Raleigh, NC 27607-5163  
(919) 787-5181  
(919) 787-4916 Fax  
[www.nclta.org](http://www.nclta.org)

### Executive Staff

Penney De Pas, CAE  
Executive Director  
[pdepas@olsonmgmt.com](mailto:pdepas@olsonmgmt.com)

Jennifer Ernst  
Membership Services  
[jernst@olsonmgmt.com](mailto:jernst@olsonmgmt.com)

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### PART VII. AMEND TITLE INSURANCE RESERVE LAWS.

**SECTION 7.1.** G.S. 58-26-1(b) is repealed.

**SECTION 7.2.** G.S. 58-26-1 is amended by adding a new subsection to read:

“(b1) Domestic and foreign title insurance companies are subject to the same capital, surplus, and investment requirements that govern the formation and operation of domestic stock casualty companies. Domestic title insurance companies are subject to the same deposit requirements that govern the operation of other domestic casualty companies in this State. Foreign or alien title insurance companies are subject to an initial deposit pursuant to G.S. 58-26-31(b), based on the forecasted statutory premium reserve and the supplemental reserve for the first full year of operation in this State, but not less than two hundred thousand dollars (\$200,000).”

**SECTION 7.3.** G.S. 58-26-20 reads as rewritten:

“§ 58-26-20. Unearned Statutory premium reserve.

Every domestic title insurance company shall, in addition to other reserves, establish and maintain a reserve to be known as the ‘unearned statutory premium reserve’ for title insurance, which shall at all times and for all purposes be considered and constitute unearned portions of the original risk premiums and shall be charged as a reserve liability of such the title insurance company in determining its financial conditions. The unearned premium reserve shall be withdrawn from the use of the insurer for its general purposes and placed in a trust account, as approved by the Commissioner, in favor of the holders of title policies and held available for reinsurance of the title policies in the event of insolvency of the insurer. Nothing herein contained shall preclude such an insurer from investing said reserve in investments authorized by law for such an insurer, and the income from such invested reserve shall be included in the general

income of the insurer to be used by such insurer for any lawful purpose. condition.”

**SECTION 7.4.** G.S. 58-26-25(a) reads as rewritten:

“(a) The unearned statutory premium reserve of every domestic title insurance company shall consist of the aggregate of:

- (1) The amount of the unearned premium reserve held as of December 31, 1998.
- (2) The amount of all additions required to be made to such reserve by this section, less the reduction of such the aggregate amount required hereby. by this section.”

**SECTION 7.5.** G.S. 58-26-25(b) reads as rewritten:

“(b) A domestic title insurance company on and after January 1, 1999, shall reserve initially as an unearned a statutory premium reserve a sum equal to ten per centum percent (10%) of the following items set forth in the title insurer’s most recent annual statement on file with the Commissioner:

- (1) Direct premiums written, and written.
- (2) Premiums for reinsurance assumed less premiums for reinsurance ceded during the year.”

**SECTION 7.6.** G.S. 58-26-25(c) reads as rewritten:

“(c) The aggregate of the amounts set aside in unearned statutory premium reserves in any calendar year, pursuant to under subsection (b) of this section, shall be reduced annually at the end of each calendar year following the year in which the policy is issued, over a period of 20 years, pursuant to the following: twenty percent (20%) the first year; ten percent (10%) for years two and three; five percent (5%) for years four through 10; three percent (3%) for years 11 through 15; and two percent (2%) for years 16 through 20.”

*continued on page 3*

**SECTION 7.7.** G.S. 58-26-30 is repealed.

**SECTION 7.8.** Article 26 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**“§ 58-26-31. Statutory premium reserve held in trust or as a deposit.**

(a) Each domestic title insurance company shall withdraw from use funds to be used by the Commissioner in the event of the insurer’s insolvency, the funds being equal to the statutory premium reserve and the supplemental reserve pursuant to G.S. 58-26-25. The amount shall be held in a trust account, as approved by the Commissioner. The trust account will be held in favor of the holders of title policies in the event of the insolvency of the insurer. Nothing in this section precludes the insurer from investing the reserve in investments authorized by law for that insurer, and the income from the invested reserve shall be included in the general income of the insurer to be used by the insurer for any lawful purpose.

(b) Each foreign or alien title insurance company shall withdraw from use funds to be used by the Commissioner in the event of the insurer’s insolvency, the funds being equal to the statutory premium reserve and the supplemental reserve as calculated under G.S. 58-26-25 for North Carolina risks. The Commissioner shall hold the funds as a deposit in accordance with G.S. 58-5-20. Annually, the company shall file a statement of actuarial opinion consistent with the annual statement instructions for North Carolina risks, issued by a qualified actuary, in support of this deposit.

(c) A title insurance company shall have 30 days after notification by the Commissioner to increase the amounts held on deposit. If the amount held on deposit is greater

than the amount required under subsection (b) of this section, the Commissioner shall release the excess within 30 days after a request by the insurer.”

**SECTION 7.9.** G.S. 58-26-35 reads as rewritten:

**“§ 58-26-35. Maintenance of the unearned statutory premium reserve.**

~~If by reason of any cause, other than depreciation in the market value of investments; the amount of the assets of a title insurance company held as investments of its unearned premium reserve in trust or held by the Commissioner under G.S. 58-26-31 should on any date be less than the amount required to be maintained by law in such reserve; maintained, and the deficiency shall is not be promptly cured, such the title insurance company shall forthwith immediately give written notice thereof of the deficiency to the Commissioner and shall make no further policies, contracts of title insurance or reinsurance agreements of title insurance not write or assume any title insurance until the deficiency shall have has been eliminated and until it shall have has received written approval from the Commissioner authorizing it to again issue such policies, contracts of title insurance or agreements. write and assume title insurance.”~~

## **Around the State**

**Fidelity National Title** has opened an office in Boone. This is Fidelity’s tenth office in North Carolina and is headed by *Teresa Brown*, Branch Manager.

**Master Title Agency** has a new address: 8640 University Executive Park Dr., Charlotte, NC 28262, (704) 547-0969.

*Linda Lee Allan* has retired from **Consumers Title Co.** *Richmond Page* is the new Agency representative.

*James Williams* has been hired as Underwriting Counsel for **Chicago Title** in Wilmington.

# Executive committee devotes October agenda to finances and legislative issues

The NC Land Title Association executive committee met in Raleigh on October 9, 2002, for its regular, quarterly meeting. Sarah Friede was introduced as the newly elected Secretary; Larry Johnson was introduced as the newly appointed General Counsel; David Shearon was introduced as the newly elected Attorney Section Representative; and Jennifer Ernst was introduced as the newly hired Membership Director.

A large part of the agenda was devoted to discussion concerning the proposed operating budget for 2003, membership renewal rates, the level of special assessment for government relations, and the sponsorship levels for the 2003 Real Property Section Convention.

President Chris Burti announced the following committee chair appointments:

- 2003 Convention – Bryan Rosenberg
- Editorial – Sarah Friede
- Forms – Bryan Rosenberg
- Legislative – Larry Johnson
- Membership – Holly Alderman
- Awards/Nominations – Nancy Ferguson
- RPS-RODA-NCLTA task force – Sarah Friede
- Substitute Title Products – Nancy Ferguson

In the area of state legislation, it was noted that HB 716 had been stalled in session due to objections from the Administrative Office of the Courts. A draft of the Future Advances Statute was proposed and feedback requested. It was also noted that there appears to be a movement both within and outside the Legislature to change G.S. 58-26, the law that encompasses the main provisions of the title insurance statute.

With regard to substitute title products, it was announced that Radian has pulled its product pending the outcome of its appeal in California. Representatives from Zurich Insurance visited the NC Department of Insurance in July to discuss the former's E&O coverage. Unfortunately, the NC DOI had already approved the coverage with a mortgage impairment endorsement. The NC Bankers Association is touting these products, unless G.S. 58-26 is changed.

A report was received from Sarah Friede on the NCLTA-RPS-NCARD liaison group that is considering how to address non-conforming documents consistently across the county registries. (*See related article on page 5.*)

The next meeting of the executive committee was scheduled for Wednesday, January 8, at the association's headquarters in Raleigh.

## 2003 Membership Renewals

Membership renewal notices were sent in November to title company, attorney, and affiliate members of the NC Land Title Association. Renewals were due on December 31, 2002, for the 2003 calendar year. Title company dues notices were sent to the Main Representative of each company. In addition to regular company dues (including any branch and directory listings), a mandatory assessment for government relations was also included.

If you have not received your renewal notice, please contact NCLTA headquarters at [membership@nclta.org](mailto:membership@nclta.org) or (919) 861-5584. Thank you.

# Liaison task force among title industry, Registers of Deeds, and real property section

The NCLTA/RPS/NCARD (NC Association of Registers of Deeds) Task Force conducted its second meeting in October to discuss issues and concerns common to both organizations, and will be joined by a North Carolina Paralegal Association representative at future meetings. The task force works at identifying practices, procedures, and changes in legislation that affect the searching, recording, and maintaining of public documents. The task force consists of Nancy Ferguson, representing the Real Property Section of the Bar; Ann Shaw, Randolph County Register of Deeds; Judy Gibson, Mecklenberg County Register of Deeds; and Holly Alderman and Sarah Friede representing NCLTA.

A supplement to the Register of Deeds handbook is being finalized and will include information on timber deed taxes, refunding excessive excise taxes, non-standard document guidelines, military discharges, and other topics. The current handbook is an excellent reference tool for attorneys and title insurers, and may be ordered from the Institute of Government.

Proposed revisions to NCGS 47-14 regarding notary requirements, including out-of-state notary acknowledgements, were discussed. Although the thumbprint and time of day requirements were deleted from an updated proposal, left intact were requirements that notaries maintain a journal and record the address of the signer. The proposal also contains a uniform notary acknowledgement form. The changes will potentially change requirements for probating documents (such as ensuring they conform with formatting standards) but should reduce the risk of fraudulent signatures.

NCARD has negotiated guidelines for recording under the new formatting statute, but as neither joining NCARD nor following the guidelines are requirements for Registers, compliance with the guidelines is voluntary. A copy of "Guidelines for Charging the Non-Standard Document/Instrument

Fee" (September 2002) needs to be made available to the Bar so that attorneys can be better informed and registries can be encouraged to comply with the guidelines. The formatting statute has been a source of confusion for many attorneys and has been inconsistently applied from county to county. (The Guidelines are now posted on the RPS page of the NCBA web site.)

There are several counties whose registers have declined to join NCARD. NCARD representatives work toward uniformity in recording, indexing, and compliance with legislation that affects all counties, and are of the opinion that attorneys in those counties whose registers do not belong could be effective in attempting to encourage their Registers to join the association.

Registers will soon be required to remove military discharges from the public records if so requested by the veteran. (It has long been the practice of registers to accept military discharges for recordation for the convenience of the veterans, and now some veterans are requesting that they be expunged from the record in order to protect their privacy.) Nash, Pamlico, and Craven Counties are test counties, and the remaining counties will be required to begin removing discharges in July 2003. The registers face the problem of how to comply without destroying the medium (such as microfilm) and records that may physically adjoin the purged documents.

Some of the issues for the January 8 meeting included electronic recording and problems presented with simultaneous recordings. All NCLTA members are welcome to attend these liaison task force meetings; if you are interested, please contact Sarah Friede at (910) 343-8374 for details. The next meeting will be April 9 at the Investors Title Co. offices in Chapel Hill. Anyone seeking more information about NCARD can access the web site at [www.iog.unc.edu/organizations/regdeeds](http://www.iog.unc.edu/organizations/regdeeds).

taken, off-guard and ill prepared, our last-minute protestations will appear to be little more than self-serving appeals.

There will be an intense scramble to deal effectively with the multitude of issues that must be resolved in order for the Legislature to adopt a budget in the current state of our economy. This scramble will leave little time for our representatives to consider reflectively the issues most pertinent to our industry and adopt those which pass scrutiny in the cold light of logic on their merit. Therefore, it will be up to us, as an organization, to do everything within our power to convince our legislative representatives of the merits and importance of our proposals to the welfare of their constituency. In order to be successful in our endeavors we must not rely solely on the efforts of our committees and officers. Nor, can we look only to the designated representatives of our corporate members. Instead, every individual member and every

employee of corporate members needs to identify a legislator that they can contact on a personal level. These individuals need to be provided concise, accurate and cogent information supporting our positions and demonstrating their superior benefits to the public. It is only through such contacts that the significance and merit of our efforts can be presented clearly and effectively. If you will provide us with the contact information of anyone willing to participate in this effort, we will then be able to provide each with the necessary information in the most timely and effective manner possible. *(Please use the form on page 7 to inform us of your contacts.)*

Yes, we are talking about a 'grassroots effort'. Yes, that is a hackneyed term. Yet, the ultimate irony of clichés is that they frequently become rooted in our language because they, so often, communicate universal truths. We wish you a Happy, Prosperous and Successful New Year.

## Convention Calendar

### **ALTA 2003 Federal Conference**

April 13-15, 2003  
Capital Hill Hyatt  
Washington, DC

### **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 Annual Convention**

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

### **NCLTA 2004 Annual Convention**

September 15-19, 2004  
The Boar's Head Inn  
Charlottesville, VA

# NCLTA Legislative Contact Form

Name: \_\_\_\_\_

Company/Firm: \_\_\_\_\_

Legislative District: NC House \_\_\_\_\_ NC Senate \_\_\_\_\_ US House \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**I know the following legislative representatives:**

(Also, please indicate how well acquainted you are with the representative.)

NAME	REP / DEM / IND	NC HOUSE / NC SENATE / US CONGRESS / US SENATE
_____		
_____		
_____		
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_____		



**Please return this form to:**  
  
NCLTA Legislative Committee  
1500 Sunday Drive, Suite 102  
Raleigh, NC 27607-5151  
  
Fax (919) 787-4916  
  
Email: [pdepas@olsonmgmt.com](mailto:pdepas@olsonmgmt.com)