

N★Carolina Update

NCLTA's Exclusive Report to its Members

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President's Message

by Chris Burti



It is newsletter deadline time again and with it comes the opportunity to update our membership on the activities of your Association. Again, much has occurred since our last issue.

Convention Chair Bryan Rosenberg has been successful in assembling a program for our annual convention at Williamsburg with topics and speakers that all members should find highly interesting and useful. Through the sponsorship of Fidelity National Title Insurance Co. and Chicago Title Insurance Co., the new North Carolina State Bar Ethics CLE requirements can be met painlessly with a fascinating format. Plans are being formulated to provide a children's program in the President's suite on the evening of the annual banquet at a minimal cost. Don't miss out by missing this year's meeting.

Our Legislative Committee has been working with our lobbyist, Anne Winner, on a

long list of legislative proposals addressing real property issues. The diligent efforts of this group of dedicated members have produced some good legislation in this Session including new statutes dealing with simultaneous recording and providing greater certainty with respect to subordination. A summary of the significant new legislation follows in this issue. Some technical amendments may yet be required due to practical realities, but these bills should improve the status of land titles in North Carolina.

In my first message I asked you to become involved in the committee work of your Association. The successful attainment of so many of our goals this year is directly attributable to the enthusiastic response to that request by so many hard working members. It has been a true honor to be a small part of this effort. Thanks to all of you who have contributed so much time and effort to the activities of your North Carolina Land Title Association.

HUD Issues Final Regs Prohibiting "Flipping"

HUD has issued a new final rule on "flipping," the bank-fraud scheme named for the quick turnaround between a purchase of property and sale of the same at a grossly inflated value. Typical flips that will come under scrutiny will be those with a resale "value" of 50-150% more than the purchase price. 24 CFR Part 203, "Prohibition of Property Flipping in HUD's Single Families Mortgage Insurance Programs," seeks to end the

practice on FHA-approved loans by declaring illegal *per se* such sales within 90 days of the initial purchase. Flips after 91 days but within 180 days are also subject to HUD scrutiny, allowing case-by-case exceptions to be made only if the lender can meet criteria for determining the legitimacy of the resale prices. For example, a lender can obtain a second appraisal to verify the accu-

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North Carolina Land Records Joint Task Force

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 NCLTA-RPS-NCARD task force has been renamed the NC Land Records Joint Task Force Task. The Land Records Joint Task Force was joined by more new members at its most recent meeting on June 11: Gary Whaley of Investors Title, Clark Brewer (an attorney in private practice), and Melissa Beard, executive director of the NC Surveyors Society.

Holly Alderman created a survey to go to Registers of Deeds in all 100 counties in an effort to garner information about the consistency (and inconsistency) of recording procedures. Some responses to the surveys have been returned, with 17 counties accounted for thus far. In the coming months, the surveys will be mass-distributed to members of the Real Property Section (via the List Serve), the NC Registers of Deeds attending the annual meeting, surveyors attending fall seminars, and NCLTA members. (A copy of the survey is attached to this newsletter.)

The sometimes-strained relationships between real property practitioners and their local Registers were discussed, as well as the problems that often accompany a flood of freelance paralegals.

Simultaneous recordings, and the statutory revisions that will come into effect with HB629, were also discussed in reference to the particular technicalities of recording

multiple documents in various counties. One of the issues the survey will flesh out is how many counties "hold" the time on multiple documents recorded in a single transaction and how many let time run. Members voiced concerns about the practice of "holding" time in a pure-race state.

The "Notice of Satisfaction" statute, when passed, will allow an attorney or title insurer to record a "notice of satisfaction" in the absence of an actual cancellation of record, stating that the deed of trust was paid in full and should be considered satisfied. This will help clean up the public record, and alleviate the problems caused by faulty cancellations that must be returned to lenders. In addition, most Registers find themselves having to prioritize what documents get recorded first, and cancellations coming in by the box-load tend to get backlogged in many counties.

The next meeting of the Task Force will be at the Investors Title Chapel Hill office on September 24. Rex Merriman, of the Secretary of State Land Records office, and Charles Moore are being invited to the next meeting. Anyone else wishing to join is also welcome.

Contact Sarah Friede at (910) 815-3430 or sarah@statewidetitle.com for more information.

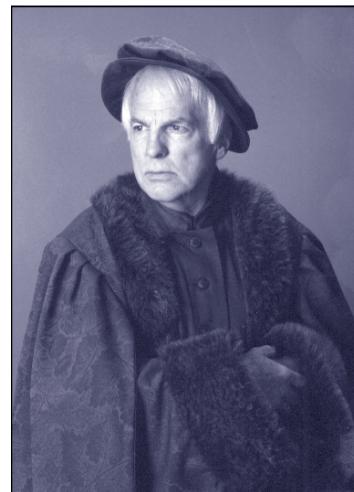
Land Records Joint Task Force Needs Your Input!

Please take a few moments to complete the survey attached to this newsletter, put together by the Land Records Joint Task Force.

The goal of this survey is to acquire as much data as possible about the various recording practices around the state and to try to work together to make land records as accurate as possible.

"Not Your Usual CLE..."

It won't be like any other NCLTA convention in past years. Be prepared for a new approach to learning that uses other senses and educational methods. Just as Colonial Williamsburg is known for its costumed interpreters bringing the past alive on Duke of Gloucester Street, Bryan Rosenberg, 2003 Annual Convention chair, has pulled together a different style of program for this year's conclave at the Williamsburg Lodge in Colonial Williamsburg, August 7-9, for which the State CLE Board has approved 5.5 CLE, including a three-hour block of professional responsibility, one hour of which will address the new Substance Abuse requirement.



Using the dramatic and dynamic aspects of theater and the interactivity of small groups, the acting group Periaktos Productions, LLC, (<http://periaktos.com/>) from South Dakota has developed two new sessions for presentation to NCLTA on Saturday morning: "The Art of the Law: A Workshop in Professionalism for Lawyers" (2 hours) and "The Snake Pit: Substance Abuse and the Abuse of the Profession" (1 hour). Attorneys may have seen other productions by this troupe presented by the NC Bar Foundation, such as "Crimes, Causes, and the Courtroom: Clarence Darrow" and "Impeach Justice Douglas." The learning objective of the first session is to raise the bar (pun intended?) to look at the inspirational aspects of law that constitute "professionalism" rather than focus on what you need to know to avoid being sued by your clients. The second session will use humor to heighten awareness and involve the audience through the senses, emotion, and intellect to educate about the "spiritual dis-ease" of addiction that defies logic and linear thinking.

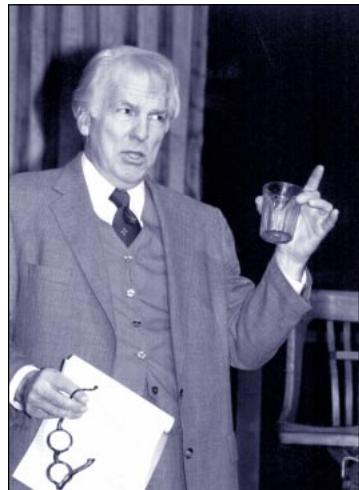
On Friday, United General Title General Counsel and Senior Vice President Robert "Bo" Edward will incorporate music, poetry, and stories in a humorous fashion while addressing the serious issues of title insurance and real estate law. Earlier that morning, two-and-a-half, more traditional, hours of CLE sessions will include an "ALTA Update" from the ALTA Chair of the Abstracters and Title Insurance Agents Section, Mark Bilbrey, president of Warranty

Title and Abstract, Inc., of El Reno, Oklahoma; a "Real Property Section Update" from Raleigh attorney Barry Mann; and "Caveat Emptor and the Disgruntled Buyer-Pitfalls for Practitioners to Avoid," presented by Margaret Shea Burnham of Adams, Kleemeier, Hagan, Hannah, and Fouts of Greensboro.

The Friday afternoon golf tournament will be played at the Golden Horseshoe Course designed by Robert Trent Jones, Sr. Golfers who wish to request pairings should do so on their NCLTA registration forms.

Discount historical area tickets will be sold through NCLTA on the registration forms. Other optional events will include horseback riding and Friday evening child care for ages 4-10 years.

The reservation deadline for the Williamsburg Lodge is **Thursday, July 17**, and the NCLTA early registration deadline is **Friday, July 18**. Registration and lodging reservation information was mailed in June to members and is available on the NCLTA web site at www.nclta.org/convention.html.



Graham Thatcher appearing as "Clarence Darrow" (above) and "Sir Thomas More" (above right).
Photos courtesy of Periaktos Productions.

State Legislative Update

With the hiring by NC Land Title Association of Anne Winner as its lobbyist, NCLTA has been able to be better aware of happenings at the state capitol that affect land title issues, as well as other matters of interest to real property practitioners. As the legislature heads to what it hopes will be a summer recess, we have a summary of the bills we have tracked as they make their way through the House and Senate. Special thanks to Anne Winner for her weekly updates to the Executive Committee, some of which are summarized below in Anne's words:

Modernize Judgment Docketing Laws

(HB636): This bill updates the entry, indexing, and recordation of judgments. These amendments to the statutes apply to judgments entered, indexed, and docketed on or after September 1, 2003. This bill has been ratified and sent to the Governor.

Bill for attorney exclusion for property tax certification (HB393) has passed. Delinquent taxes will be paid out of the closing proceeds per the Ethics rule and Good Funds Settlement Act.

Mortgage Satisfaction Act is on the fast track with a redraft being sent to the National Conference of Commissioners on Uniform State Laws (NCCUSL). (Thanks to Nancy Ferguson, the only title person represented on NCCUSL, for her work and updates.)

Uniform Principal and Income Act (SB549): This bill adopts the Uniform Principal and Income Act that covers duties of fiduciaries and trustees who handle trusts. This bill has been ratified and sent to the Governor.

Elective Share Amendments (HB807): This bill clarifies certain provisions of the law establishing the elective share of a decedent's surviving spouse. The Senate passed this bill on second and third reading. The bill will return to the House for consideration of the Senate committee substitute.

Amend Powers/Settlor of Revocable Trust (HB637): This bill allows the settlor of a revocable trust to relieve the trustee of duties imposed by the Uniform Trusts Act. The House concurred in the Senate committee substitute. The bill has been ratified and sent to the Governor.

Manufactured Housing (HB1006): This bill increases consumer protections for manu-

factured home owners. This bill passed second and third reading in the House in June and will be sent to the Senate.

Guardianship Amendments (HB1123): The House concurred in the Senate committee substitute for this bill that makes a variety of changes to the guardianship statutes. The bill has been ratified and sent to the Governor.

Property Tax Correction (SB450): This bill allows a refund on property taxes for people who were evaluated as having a septic or well system, but in fact do not have such a system. This bill passed second and third reading in the House and will be ratified and sent to the Governor.

Simultaneous recording was combined with Subordinations (SB629) and adopted—see separate article on page 7.

Other state legislative bills of interest include:

- HB394 – Clarify Legal Filing Law (redefining foreclosure sales on holidays when the courthouse is open) has passed the Senate with minor changes.
- The Cartways bill is dead, and there is a lot of controversy over Elective Share amendments.
- Disclosure of public road status by sellers of real estate (SB974) – the current statute requires a developer to declare whether a public road meets the state requirements. Senator Jenkins (formerly with NC DOT) has decided that, by changing the statute's language to make it ambiguous enough, it would then require that every successive seller make full disclosure. Since most of that information is *not* in the public records, an attorney will have to do exhaustive search and charge extra money to consumers. This will possibly delay closings as attorneys try to determine from the DOT if a road is state-maintained. (It makes sense to disclose if a property is on a private road.) It appears as if this bill will not be adopted in this session.
- Internet tax listing. There is an amendment to HB972, that if a tax office maintains a current Internet listing, the public can rely on that as if it is the information directly from the tax office itself.
- Future Advance statute is still taking shape in committee.

Mortgage Impairment: Recommended Reading

"Consumer Impacts of Substituting Radian Lien Protection Coverage for Refinance Lender's Title Insurance," A Study by Dr. Nelson Lipshutz

One of the most thorough reports to date on the issue of mortgage impairment insurance, Lipshutz discredits, piece-by-piece, a recent report by Radian Guaranty about the supposed superiority of its impairment product. Lipshutz concludes that "RLP [Radian Lien Protection] does **not** cost less than title insurance under the conditions which are required to qualify to use the RLP product. Title insurance rates applicable under these conditions are cheaper than RLP. Equally important, the substitution of RLP for refinance title insurance would impose costs on the...consuming public that more than outweigh any putative benefits."

Lipshutz states the results of a recent ALTA survey showing that 25% of all title exams reveal the need for curative work and asserts that the title insurance process functions as a "constant repair of the public record" and protects the public from the risk of financial fraud. Should the process of conducting an exam be abandoned in favor of a mere credit check, the percentage of chains of title in need of repair would jump to 36% within 15 years. Working through the numbers, he goes on to conclude that the increase in need for curative work would obviously cause closing delays, costing sellers a whopping \$334 million per year in ad-

ditional mortgage payments—and that's just in California.

The number of chains of title in need of repair would also leave more and more mortgages in a pool without protection. According to the terms of the Radian policy, the total limit of liability for undisclosed lien coverage is 0.5%, leaving 99.5% of all mortgages without coverage. In Lipshutz's estimation, more than 2/3 of all pools would suffer an uncovered loss, leaving both lenders and consumers dangling.

The study also points out some socio-economic reasons for the inferiority of the RLP product, one that is never mentioned by Radian. Because mortgage impairment insurance requires a certain minimum FICO score in order for the mortgage to qualify for the pool, and because it also excludes altogether all loans made on manufactured homes, RLP disproportionately impacts on minority borrowers and low-income borrowers. Title insurance, on the other hand, is race- and income-neutral, and can provide lenders with specialized coverage for manufactured homes.

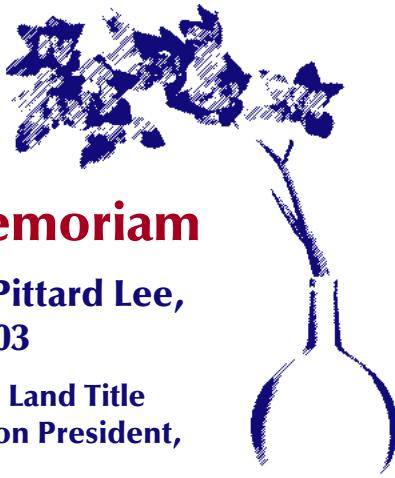
To read the entire text of the report, click on www.alta.org/mortgage/lipshutz1.pdf.

Executive Committee Reviews Convention Plans, Legislative Agenda

During its quarterly meeting on May 14, the NCLTA Executive Committee considered the annual convention budget and plans for the educational and social programs (see article on page 3). It also reviewed the status of various state legislative bills of interest that had passed the crossover deadline and those that did not (see article on page 4).

The Executive Committee also reviewed the Real Property Section convention and sponsorships for that convention as well as the forthcoming NCLTA convention. Finally, Nominations for the position of Secretary were considered.

The next meeting of the Executive Committee is scheduled for August 7 in Williamsburg at the Williamsburg Lodge.



In Memoriam

**Lucille Pittard Lee,
1920-2003**

**Carolinas Land Title
Association President,
1975-76**

The only female president of NCLTA's predecessor association, the Carolinas Land Title Association (CLTA), Lucille Lee died on Sunday, June 1. A native of Granville County, Mrs. Lee attended Duke University and worked as a legal secretary for the Johnson Hearn Vinegar Law Firm for over 40 years. She also worked for Commonwealth Land Title Company during which she served as CLTA president. Active in retirement, she volunteered at Rex Wellness Center, Meals on Wheels, and the Raleigh Little Theater.

Memorial donations may be made to Edenton Street United Methodist Church, 228 W. Edenton St., Raleigh, NC 27602 or the American Heart Association, 3131-100 RDU Center Dr., Morrisville, NC 27560.

Welcome New Member

At its May 14 meeting, the Executive Committee approved the following new Attorney member:

Robert F. Garner

Garner Law Office

3415 Yanceyville St. (27405-4033)

P.O. Box 13002

Greensboro, NC 27415-3002

(336) 621-3890 • 800-897-1855

Fax (336) 621-8202

Email:

robertgarner@garneralawoffice.com

And More News on Radian Guaranty...

The Lipshutz report (page 5) was released one day after the California Insurance Commissioner announced in April that he would hear additional evidence on Radian's product and would not automatically uphold a state court's ruling that banned Radian from offering its mortgage impairment insurance. The ban remains in place until a decision is announced by the Department, which did not state when a decision could be announced.

A bill has been introduced in the California legislature, proposing to allow "alternative title products" to be issued and amending the mono-line statute California has had in effect, which would virtually deregulate the insurance industry. Luckily, the bill has not gotten much support, as Californians have only to look back at the energy crisis of two summers ago to see what effect recent deregulation has already had on the economy. (Most states adopted their mono-line statutes during the Great Depression, when too many companies offering title insurance and other insurance were collapsing.)

HUD Issues Final Regs Prohibiting "Flipping"

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racy of the first appraisal (thus eliminating crooked appraisers from being part of the scheme) or by showing documented improvements to the property. No exceptions will be made for sales within the first 90 days. Even sales within 12 months of the initial purchase may also have to be backed up with additional documentation in order to satisfy HUD's auditors.

Although aimed at preventing the unscrupulous from taking advantage of buyers and banks, this new rule would also seem to put a halt to the common practice of keeping property titled in the name of a developer during construction, then passing title through the builder briefly before transferring title to the buyer.

The 8-page rule can be found at www.alta.org/govt/issues/03/68fr23370.pdf.

Subordination Agreements and Simultaneous Recordings Statute

by Nancy Short Ferguson, NCLTA Immediate Past President,
and Counsel, Chicago Title Insurance Company

I am pleased to report that Article 39 of the NCGS was amended on June 9th adding a new section (§ 39-6.6) that has been ratified by both Legislative Houses (but not yet signed by the Governor) and incorporating Subordination Agreements, and two other sections of Article 47 have been rewritten regarding both Subordination Agreements and Simultaneous Recordings. (A full text of the ratified bill begins on page 9.) Both approaches are prospective, not retroactive, and do not take effect until October 1, 2003. But, hopefully, this will bring the statutory law in conformity with what we believe to be the reasonable expectations of consumers and attorneys. A couple of observations are in order:

1. Both provisions of the statute are not exclusive. For example, other forms of subordination may be sanctioned by other statutes or common law (such as G.S. Chapters 47A, 47C and 47F). Another example, establishment of priority as between recorded documents under G.S. 47-18 and G.S. 47-20 does not change the establishment of priority under other statutes (i.e. mechanics' lien, G.S. 29-30) or common law (instantaneous seisin, Dalton Moran Shook case).
2. Regarding simultaneous recording, this provision would only take effect if two or more instruments, the priority of which are affected under G.S. 47-18 and G.S. 47-20, are recorded at the same time. If the recording times are different, recording time still governs and this amendment is irrelevant. This amendment was to provide a backup determination of priority (not a conclusive presumption) in the event of simultaneous recording. Not all registries "hold" documents so that they will have simultaneous recording times frequently. Some specifically do not. Some do so only upon instructions from the

person recording. Most registries have document id numbers that are assigned and appear in order of recordation, but a few do not. Ultimately UCC filings and electronic filing may necessitate the document number for all and, we believed, was the more reliable indicator of order. Some registries have different sets of "books" rendering the book and page a less reliable indicator of order (and, thus, priority). The statute was not intended to change established procedures, but that may be the effect.

Special thanks go to those who worked hard in getting these to the table:

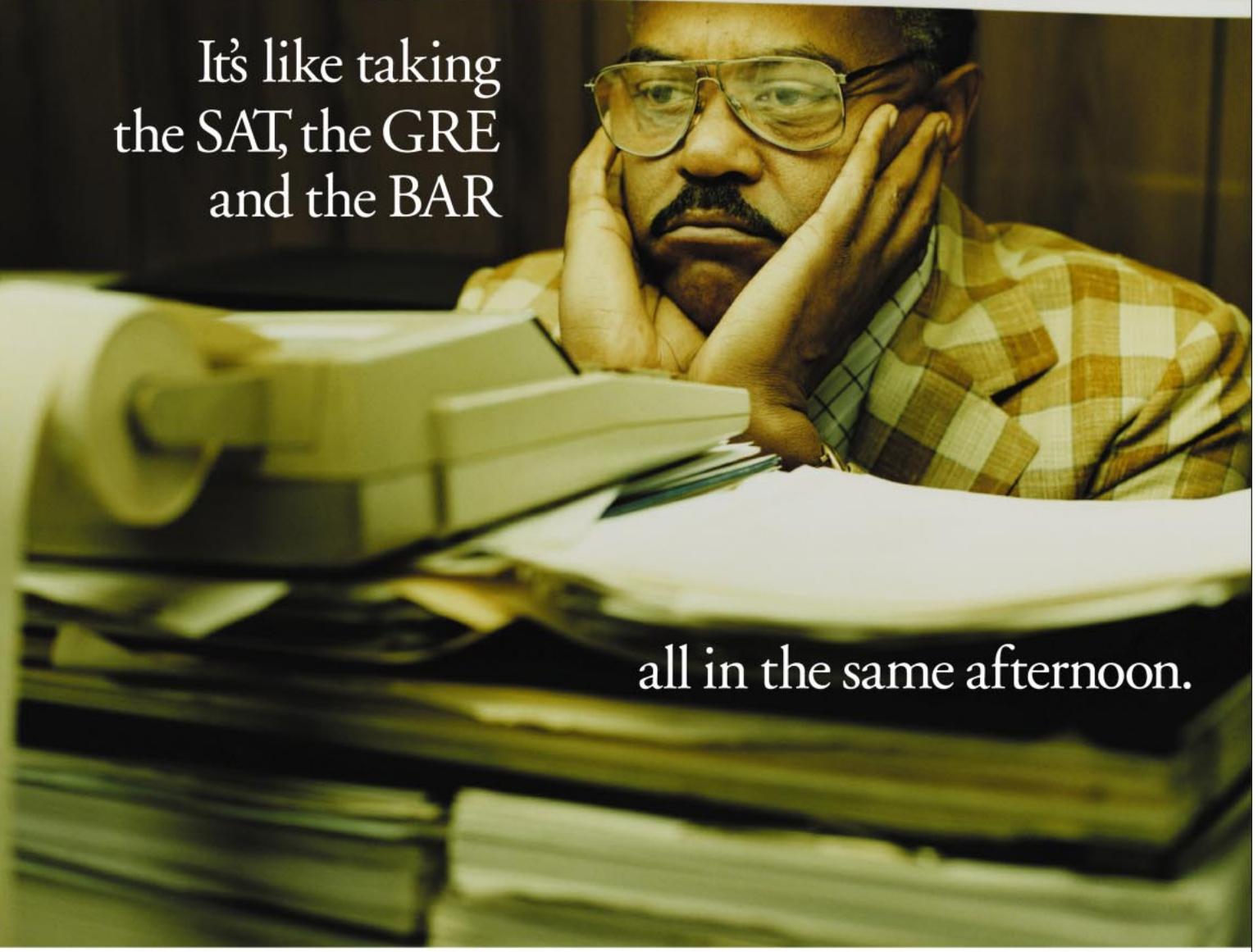
- *Paul Stock, Legislative counsel for the NC Bankers Association, who facilitated hundreds of hours of meetings, drafting, e-mails on these and other matters, as well as the Legislative efforts involved.*

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Around the State

Statewide Title, Inc., has opened a new branch in Franklin. *Janie Hastings* is the branch manager. The address is: Statewide Title, 93 Church St., Suite 208, Franklin, NC 28734, phone 828-524-7761, fax 828-524-8611.

Holly Alderman has resigned from **Investors Title** and her position as Treasurer on the Executive Committee in order to return to private practice. Holly made significant contributions to NCLTA during her tenure on the Executive Committee and will be sorely missed. The Executive Committee is considering its options for naming a replacement but no announcement could be made as of the print deadline for this newsletter. The Nominating Committee is also seeking nominations for the position of Secretary for the 2003-2004 term. Regular (title company) members will vote on the new officers at the annual meeting on August 9 in Williamsburg.



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Subordination Agreements and Simultaneous Recordings Statute

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- Anne Winner, NCLTA lobbyist, Michelle Frazier, and NCLTA President Chris Burti for their additional Legislative efforts.
 - Chris Vaughn for drafts, redrafts, more redrafts of the Subordination Act, and discussions with the Task Force composed of Paul Stock, Chris Vaughn, Ed Winslow, Jim Creekman, John Warren, and John Fleming.
 - Tom Steele, Steve Goldstein, Kim Gallimore, and Chris Burti for e-mails and discussions on the revisions to G.S. 47-18 and G.S. 47-20.
 - Many others (including Ed Urban, Ann Shaw, Judy Gibson, Sarah Friede, Connie Burris, and Holly Alderman especially) who offered ideas, information and practical suggestions which led up to what we hope is a positive clarification of two less-than-helpful areas of law.
- evidenced by a deed, easement, lease, sublease, deed of trust, mortgage, assignment of leases and rents, judgment, claim of lien, or any other record, instrument, document, or entry of court.
- (b) The trustee of a deed of trust shall not be a necessary party to a subordination agreement unless the deed of trust provides otherwise.
- (c) For purposes of G.S. 1-47, a commitment or agreement described in subsection (a) of this section is deemed a conveyance of an interest in real property.
- (d) The section is not exclusive. No agreement that is otherwise valid shall be invalidated by failure to comply with the provisions of this section."

SECTION 2. G.S. 47-18(a) reads as rewritten:

"(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainor or lessor but from the time of registration thereof in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county. Unless otherwise stated either on the recorded instrument or on a separate recorded instrument duly executed by the party whose priority interest is adversely affected, instruments registered in the public record shall be presumed to have priority based on the order of recordation as determined by the time of recordation. If instruments are recorded simultaneously, then the order of recordation shall be presumed as follows, in order of priority:

- (1) The earliest document number set forth on the recorded instrument.
- (2) The sequential book and page number set forth on the document if no

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GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2003

SENATE BILL 629 RATIFIED BILL

AN ACT TO CLARIFY THE REQUIREMENTS FOR SUBORDINATION AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 39 of the General Statutes is amended by adding a new section to read:

“§ 39-6.6. Subordination agreements.

(a) A written commitment or agreement to subordinate or that subordinates an interest in real property signed by a person entitled to priority shall be given effect in accordance with its terms and is not required to state any interest rate, principal amount secured, or other financial terms. For purposes of this section, an “interest in real property” shall include all rights, title, and interest in and to land, buildings, and other improvements of an owner, tenant, subtenant, secured lender, materialman, judgment creditor, lienholder, or other person, whether the interest in real property is

Subordination Agreements and Simultaneous Recordings Statute

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document number is set forth on the recorded instrument.

The presumptions created by this subsection are rebuttable."

SECTION 3. G.S. 47-20(a) reads as rewritten:

"(a) No deed of trust or mortgage of real or personal property, or of a leasehold interest or other chattel real, or conditional sales contract of personal property in which the title is retained by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time of registration thereof as provided in this Article; provided however that any transaction subject to the provisions of the Uniform Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions of that act and not by this section. Unless otherwise stated either on the recorded instrument or on a separate recorded instrument duly executed by the party whose priority interest is adversely affected, instruments registered in the public record shall be

presumed to have priority based on the order of recordation as determined by the time of recordation. If instruments are recorded simultaneously, then the order of recordation shall be presumed as follows, in order of priority:

- (1) The earliest document number set forth on the recorded instrument.
- (2) The sequential book and page number set forth on the document if no document number is set forth on the recorded instrument.

The presumptions created by this subsection are rebuttable."

SECTION 4. Section 1 of this act becomes effective October 1, 2003, and applies to subordination agreements filed or recorded on or after that date. Sections 2 and 3 of this act become effective October 1, 2003, and apply to all instruments filed or recorded on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 2003.

Convention Calendar

NCLTA 2003 Annual Convention

www.nclta.org/convention.html
August 7-9, 2003
Williamsburg Lodge
Williamsburg, VA
www.colonialwilliamsburg.org

ALTA 2003 Annual Convention

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

ALTA 2004 Federal Conference

April 19-21, 2004

NCLTA 2004 Annual Convention

September 15-19, 2004
The Boar's Head Inn
Charlottesville, VA
www.boarsheadinn.com

ALTA 2004 Annual Convention

October 6-9, 2004
The Westin Copley Place
Boston, MA