President’s Message

Candice E. Williams

Starting the President’s Message for this newsletter has not been an easy task. In the last few weeks, our association has been criticized for our involvement in Proposed 2008 Formal Ethics Opinion 13 Audit of Real Estate Trust Account by Title Insurer, recently published in the Winter 2008 Edition of The North Carolina State Bar Journal. As we have previously discussed in prior newsletters, the purpose of the proposed Ethics Opinion is to reduce attorney defalcation by allowing a title company to audit an attorney’s real estate trust account without the attorney facing an ethical violation. It would be a voluntary audit; the attorney would always have the right to decline an audit request. We know it is only a handful of bad actors who have caused these losses, which have been unprecedented, but it is up to each of us to communicate to our clients and colleagues this endeavor is not just about preventing losses to our companies, but is about protecting consumers and supporting the attorney system here in North Carolina.

I have been impressed by the members of the Real Property Section Council, practicing real estate attorneys, and members of our Loss Prevention Committee who have acknowledged the problem and shown their support and willingness to work towards a solution, especially those members of the practicing bar who may not fully agree with the concept of an audit but have offered to help us develop the audit process. To that end, if the Ethics Opinion passes, the Loss Prevention Committee will be working with the Real Property Section and practicing real estate attorneys to develop a voluntary audit procedure that is fair and is as least intrusive as possible to the practicing real estate attorney.

Moving on to our other initiatives, our Association works with the North Carolina Department of Insurance every four years to revise the Title Agents Licensing Exam. This past year, Jay Williams, Chair of our Education/Study Guide Committee, along with volunteers Denise Lee; Kim Rosenberg; Jane Barkley and Marc Garren met November 21, 2008, at the Department of Insurance to review the exam and offer their comments.

Taby Cruden, Chair of our Forms Committee has been working diligently to revise our current mechanics’ lien forms. Taby has been working on the Owner/Borrower Affidavit and Indemnity Agreement (For Transaction Involving No Recent Improvements); while Nancy Ferguson and Ed Urban have taken the Owner/Borrower/Contractor Affidavit, Indemnity and Subordination Agreement (For Construction in Progress or Immediately Contemplated with Construction Loan) and Ryan Wainio worked on the Owner/Contractor Affidavit and Indemnity Agreement (For Improvements Recently Completed). Kathy Speight also helped clean up the forms and ready them for our website launch (see article on page 2). In addition, thanks go to Attorney Section members Jeff Johnson and Ned Manning for their valuable contributions.

We are nearing the end of our endeavor into Railroad Legislation. David Ferrell and Nick Long have met numerous times with the Railroad Corridor Study Committee, and there was a potential meeting scheduled in January before the start of the legislative session. They have decided the railroad maps will be housed in the North Carolina Department of Transportation Rail Division in Raleigh and available through a website for downloading and printing. They are still in discussion over other issues, including encroachments.

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NCLTA Introduces New Lien Forms

The North Carolina Land Title Association has replaced its older lien waiver and affidavit forms with three new versions, effective February 26, 2009. These forms are available for download in PDF or Word format from the NCLTA web site: www.nclta.org/forms.html. They are copyrighted by the North Carolina Land Title Association, so that ANY change to these forms whatsoever (except the addition of an NCLTA MEMBER Title Underwriter Company’s name/logo) must be noted on the form itself and the copyright information removed. Each form includes an Instructions page and the Instructions also exist as a separate download.

NCLTA Form 1 - OWNER AFFIDAVIT AND INDEMNITY AGREEMENT (NO RECENT IMPROVEMENTS)

NCLTA Form 2 - OWNER/CONTRACTOR AFFIDAVIT, WAIVER OF LIENS AND INDEMNITY AGREEMENT (CONSTRUCTION RECENTLY COMPLETED)

NCLTA Form 3 - OWNER/CONTRACTOR AFFIDAVIT, INDEMNITY AND LIEN SUBORDINATION AGREEMENT (CONSTRUCTION IN PROCESS OR IMMEDIATELY CONTEMPLATED) [LENDER COVERAGE ONLY]

Also included on the web page is some Sample Commitment Requirement Language:

For insurance regarding priority of conveyance by seller to proposed insured owner over potential liens for labor, services or materials, including surveys, architects, engineers and rental equipment (herein “liens”) of seller, or priority of proposed insured lender’s deed of trust (once recorded) over said liens of seller and/or construction borrower, receipt of applicable NCLTA form (or substantially similar form approved by Company counsel prior to closing), completed and executed by all required parties in compliance with the applicable form’s instructions regarding same, to wit:

NCLTA Form 1, if no recent construction or addition of improvements on land and no construction loan by signing owner or borrower is contemplated;

NCLTA Form 2, if construction on the land was recently completed; or

NCLTA Form 3, if construction is in process or immediately contemplated (for loan, including construction financing).

In addition, if the proposed purchaser will be obtaining combined purchase and construction financing from proposed insured lender as a part of the transaction to be insured, proposed purchaser (construction loan borrower) must also provide duly completed and executed NCLTA Form 3 in order to obtain insurance of priority of the construction loan over such liens against the proposed purchaser (construction borrower).
Final RESPA Rule Released by HUD

The Department of Housing and Urban Development (HUD) released its final rule on the Real Estate Settlement Procedures Act (RESPA) on November 12. The final rule and accompanying commentary is 341 pages long. HUD accepted many of the recommendations made by ALTA in its comments, testimony before Congress, and many meetings with the agency. Significantly, HUD has shortened the GFE and HUD 1/1A; dropped the closing script, volume discounts, and the “optional” reference to owners’ title insurance; extended average cost pricing to all settlement service providers; and provided a right to cure for amounts in excess of tolerances and for HUD 1/1A errors.

- **Full Summary of RESPA Final Rule [PDF]**
- **RESPA Final Rule [PDF]**
  - **HUD's Standard Good Faith Estimate Form [PDF]**
  - **Settlement Statement (HUD-1) Form [PDF]**
    - **Instructions [PDF]**

Since issuance of the Final Rule, HUD has agreed to a 90-day delay for implementation of the provisions that would otherwise have taken effect on January 12, 2009. HUD’s decision to delay the implementation was spurred by lawsuits filed by the National Association of Home Builders and the National Association of Mortgage Brokers.

Check the ALTA® RESPA Resource Center for the latest information on the RESPA Final Rule.

### HUD Delays Implementation of Required Use Rule

HUD announced that they have delayed the implementation of the Required Use provision of the new RESPA regulations. They were set to go into effect on January 12th, but will now be delayed for 90 days. The delay is in response to a lawsuit filed by the National Association of Homebuilders that sought an injunction against the provision. Although a HUD spokesperson was confident of the legality of their rule, they delayed the implementation in order to line up the administrative material needed to defend the provision.

The required use rule would prevent home builders from offering incentives or discounts to buyers that use specific settlement services providers, like title and escrow companies, brokers or lenders. This rule would affect title companies that are affiliated with homebuilders if implemented.

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**President’s Message**

I attended the American Land Title Association’s Annual Convention on behalf of the NCLTA in Koloa, Hawaii from October 15, 2008-October 18, 2008. The conference focused on the downturn in the economy and at that time, the upcoming Presidential election. Among the speakers was Doug Duncan, Chief Economist for Fannie Mae. Duncan gave one of the better economic updates I heard in 2008. The good news was household formation rates were proceeding faster than new home construction. Housing starts were at a low point, and the United States workforce would continue to grow through 2050. The bad news is the home foreclosure rate is at its highest since the Great Depression.

One of the more colorful speakers was Gordon Bethune, former CEO of Continental Airlines. Bethune focused his presentation on how he turned around the former troubled airline. His main objective was making sure all of the employees shared in the success of the airline. Bethune instituted an employee profit sharing plan to build up company morale. During the East Coast blackout of 2003, the airline employees refused to cancel flights. They used flashlights and met passengers at the curbs. Continental made two million dollars that night. Bethune said they flew that night “because our people wanted to.”

There was also an interesting TIPAC debate on the “Horizon of the Political and Regulatory Environment” between Republican Strategist Grover Norquist and Democratic Strategist Richard Goodstein. The conference ended with introductions of the new head of ALTA, Kurt Pfotenhauer, and new ALTA President Mike Pryor from Arkansas.

I hope 2009 proves to be a good year despite the negative news reports we have all heard regarding the economy, and I think it will be for the NCLTA. We are working hard to achieve some pretty lofty but very worthy goals and several should be concluded by the end of this year. Happy New Year to you and yours.

*Editor’s Note: The President’s Message was written before the Ethics Committee of the NC State Bar met on January 22, 2009. The Ethics Committee referred proposed 2008 Formal Ethics Opinion 13 to a subcommittee for further discussion.*
NCDOI approves ALTA Forms

Effective on or after November 25, 2008, the NC Department of Insurance has approved the following American Land Title Association (ALTA) forms that were revised or adopted on 10-16-08:

ALTA Short Form Commitment
ALTA Endorsement Form 4-06 Condominium
ALTA Endorsement Form 4.1-06 Condominium
ALTA Endorsement Form 5-06 Planned Unit Development
ALTA Endorsement Form 5.1-06 Planned Unit Development
ALTA Endorsement Form 6-06 Variable Rate Mortgage
ALTA Endorsement Form 6.2-06 Variable Rate Mortgage-Negative Amortization
ALTA Endorsement Form 8.2-06 Commercial Environmental Protection Lien
ALTA Endorsement Form 10-06 Assignment
ALTA Endorsement Form 10.1-06 Assignment and Date Down
ALTA Endorsement Form 17.2-06 Utility Access
ALTA Endorsement Form 23-06 Co-insurance – Single Policy
ALTA Endorsement Form 24-06 Doing Business
ALTA Endorsement Form 25-06 Same as Survey
ALTA Endorsement Form 25.1-06 Same as Portion of Survey
ALTA Endorsement Form 26-06 Subdivision

ALTA Endorsement Form 27-06 Usury
ALTA Endorsement Form 28-06 Easement-Damage or Enforced Removal
ALTA Standard Exceptions

These reinsurance forms were NOT approved because they contain the word “warranty” which is in violation of NCGS 58-3-10. (“Ced- er’s Cessation and Warranty” is on each form.)

ALTA International Facultative Reinsurance Agreement (With Direct Access)
ALTA International Facultative Reinsurance Agreement (Without Direct Access)
ALTA UCC Facultative Reinsurance Agreement

This is the statute:

§ 58 3 10. Statements in application not warranties.

All statements or descriptions in any application for a policy of insurance, or in the policy itself, shall be deemed representations and not warranties, and a representation, unless material or fraudulent, will not prevent a recovery on the policy. (1901, c. 705, s. 2; Rev., s. 4808; C.S., s. 6289.)
NCLTA Executive Committee Met in October and December

The NC Land Title Association Executive Committee met on October 29 in person and by conference call on December 22, 2008. The first meeting focused primarily on financial matters, including establishing dues, legislative assessment, and Real Property Section Convention sponsorship levels for 2009. Legislative Committee Chair Chris Burti reported on six corrective, relatively non-controversial pieces of legislation that the Real Property Section was proposing for 2009 as well as a bill proposed by NCLTA to clarify the time and place for recording powers of attorney.

Clark Brewer, chair of the Secretary of State’s NC Land Records Advisory Committee, attended the meeting as a guest to provide an update on the revival by Secretary Marshall of this Committee and its agenda.

The Executive Committee considered suggestions for expanding the involvement of members in the work of the Association’s committees and publicizing upcoming meeting dates and agendas. Committee reports were received from 2009 Annual Convention, Membership, Editorial, Education (2008 Study Guide revision), Forms (revisions to the Lien Waiver form and 1-P and 1-F), Regulatory, and Loss Prevention (proposed Ethics Opinion and preparation of educational materials). The Executive Committee authorized staff to negotiate a contract with the Grove Park Inn Resort and Spa for the 2011 Annual Convention.

The October meeting was adjourned after approving a 2009 operating budget, authorizing the signing of 2008 tax returns, and selection of a CPA firm to conduct a year-end financial review.

On December 22, the Executive Committee held a conference call to approve a number of governance policies: Whistleblower, Document Retention and Destruction, Joint Venture, and a Model License Agreement for use of the NCLTA logo by members. In addition, progress reports were received about the status of the Real Property Section Convention sponsorship, dues renewals, the lien waiver form, loss prevention, and the American Land Title Association activities.

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Virginia Beach VA 23452
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Fx: (757)552-0304
Em: juthe@titletracking.com
Web: www.titletracking.com

Attorneys
Donna R. Cohen
Donna R. Cohen, Attorney at Law
2840 Plaza Place, Suite 315
Raleigh, NC 27612
Wake
Ph: (919)783-0260
Fx: (919)783-0260
Em: drc89@mindspring.com

Jay A. Kania
Kania & Kania, PA
600-A Centrepark Rd.
Asheville NC 28805
Buncombe
Ph: (828)252-8010
Fx: (828)252-8760
Em: jay.kania@kanialawfirm.com

Richard J. Kania
Kania and Kania, PA
600-A Centrepark Rd.
Asheville NC 28805
Buncombe
Ph: (828)252-8010
Fx: (828)252-8760
Em: richard.kania@kanialawfirm.com

Celie B. Richardson
Richardson Law Group
1414 Raleigh Rd., Suite 330
Chapel Hill NC 27517
Orange
Ph: (919)932-7718
Fx: (919)932-7720
Em: celiebrichardson@aol.com
Web: www.titletracking.com

Amy Renee Kandies Zeko
Brock & Scott, PLLC
5431 Oleander Dr.
Wilmington NC 28403
New Hanover
Ph: (910)392-4988 ext. 4125; (866)676-7658
Fx: (910)202-2931
Em: amy.zeko@brockandscott.com
Web: www.brockandscott.com

NCLTA extends its Heartfelt Condolences
to the Families of

JAMES E. LONG
NC Commissioner of Insurance, 1985-2008

KRISTEN WINTERS WALKER
Daughter of Anne and Mike Winters

JOHN SHORE
Father of Nicole Shore