President’s message

Gary M. Whaley

If the attendance, discussion, and camaraderie at the 2004 Annual Convention are any indication, the state of the North Carolina Land Title Association is strong. Of course, we recognize that we are competitors in a competitive business and state. However, this year’s convention represented a strong spirit of sharing information and exhibiting cooperation to solve common problems.

The convention program was highlighted by a panel discussion of practical underwriting decisions. There was not always agreement on the manner of handling the issues, but the discussion was enlightening. Kudos go to Jay Hedgpeth for his in-depth preparation to make this portion of the program a success. Many thanks to Bryan Rosenberg for stepping in and serving on the panel at the last minute and without an opportunity to prepare. Jim Maher and Paul Hammann also helped make this session complete.

The first day was highlighted by the always informative and entertaining Pat Hetrick with his case law update. John Harris presented a forthright message from the NCBA Real property section that set the tone for the meeting.

On Saturday, Jim Maher and Paul Hammann shared with our Association the advertising campaign and the newest endorsement forms adopted by ALTA. Nancy Ferguson explained the details of the Uniform Mortgage Satisfaction Act. The program ended with Steve Brown providing a claims perspective to the convention.

Even with all of the education and sharing of thoughts about our profession, the highlight of the convention was that very personal moment when Sarah Friede was presented...
Federal developments of interest to NC title industry

**RESPA**
As reported in *This week on ALTA.org*, for the week of October 7-15, 2004, U.S. Rep. Donald A. Manzullo, chairman of the House Committee on Small Business, wrote a strongly-worded letter (http://www.alta.org/govt/issues/04/ltr-manzullo_1008.pdf) to Alphonso Jackson, Secretary of Housing and Urban Development, on October 8, requesting that the Secretary make no efforts to finalize any rules regarding the Real Estate Settlement Procedures Act (RESPA), including any draft rules to the Office of Management and Budget (OMB) while Congress is in recess.

In his letter, Rep. Manzullo reminded Secretary Jackson that the latter had promised on March 22 in his letter of withdrawal to OMB to “revise the rule ... after I have had an opportunity to brief members of Congress ...” Should the Secretary take any actions to finalize the rule prior to briefing Congressional members, the Small Business Committee Chair will consider that “a breach of that promise,” and “... expect[s] that , in order to fulfill your promise, no action will be taken on finalization of any changes to the RESPA rules until the 109th Congress reconvenes for business in late January, 2005.”

Continuing his warning, Chairman Manzullo concluded that “Failure to comply with this request will result in the Committee being forced to take whatever action it can to enforce the promise made in the letter of withdrawal.”

**FTC & DOJ encourage Massachusetts to allow nonlawyers to close**
Also reported was that the staff of the Federal Trade Commission and Department of Justice issued a joint letter (http://www.ftc.gov/os/2004/10/041008kujawskicomment.pdf) to one of the members of the Massachusetts House of Representatives—at that Representative’s request—to comment on “a bill [Mass. HB 180] that would enable nonlawyers to compete with lawyers to perform certain real estate closing service.” According to both agencies, competition is known to lower prices and enable consumers to receive better services. The real estate closing services included in the bill are “drafting deeds, mortgages, leases, and agreements; examining titles; issuing title certification or policies of title insurance; and representing lenders as their closing agents.” The arguments, using staff analysis, stressed the benefit to consumers of increased competition, lower fees, more convenient services, and Internet-based loan options. Also noted were state supreme court decisions and scholarly studies “... indicating that consumers are not likely to face additional risk of harm from nonlawyer closings.”

In urging passage of HB 180, the letter notes: Consistent with their mission to protect consumers, the Justice Department and FTC have become increasingly concerned about efforts to prevent non-lawyers from competing with attorneys in the provision of certain services through the issuance of opinions by state bar agencies and the adoption of laws and regulations by state courts and legislatures relating to the unauthorized practice of law. Through letters and amicus curiae briefs, the FTC and Justice Department have urged the American Bar Association, Virginia, Rhode Island, Kentucky, North Carolina, Georgia, West Virginia and Ohio to reject such restrictions on competition between attorneys and non-attorneys.

The letter maintains that most of the questions asked by consumers in the real estate process were asked prior to closing. It is not indicated whether the issue of claims was considered in the analysis of court cases and scholarly works.
Electronic Recording in North Carolina in 2004 and beyond

By Nancy Short Ferguson, Chicago Title Insurance Co., NCLTA liaison to NC Electronic Recordation / Notarization Advisory Council

[ED NOTE: This is an abbreviated version of a longer article scheduled to appear in the Real Property Section newsletter. Special thanks go to Carmen Bramante, Ann Shaw, Gabe Minton, and others who provided substantial education and input in this article.]

This is not a “next-generation” issue

E-Recording Is Here Today! Across the nation, over 35 counties are using some form of electronic recording, including Mecklenburg County, North Carolina (for cancellations of deeds of trust). The North Carolina Uniform Electronic Transactions Act, 2001 (“UETA”) and the federal Electronic Signatures in Global and National Commerce Act, 1999 (“E-SIGN”) have already legally authorized electronic transactions of all kinds, which includes electronic recordings. The banking industry long ago adopted technology as their increasing standard of operation, — i.e. ATM machines, online banking, key-pad credit card signatures, MERS, electronic payoff statements, etc. The law is struggling to keep up. And all of those who will be participating must adopt and adapt to technology in order to stay in the process, effectively.

E-recording statutes provide mechanisms for e-recording while all of the legal requirements applicable to “paper” transactions still apply

The signer must still personally, physically appear before the notary public. However, the document and the signatures may now be done electronically. The actual language and assurances in acknowledgment forms applicable to paper will still apply to e-notarization. (One possibility is that a new universal acknowledgment form will be adopted. But, if so, it would apply to paper and to electronic transactions.) An embossed or stamped notarial “seal” is no longer required so long as the electronic acknowledgement contains the requisite information.

Statutes must be technology neutral

Technology changes faster than legislation can possibly keep up. Already, the existing and developing methods of e-recording range widely — from a fax of the signed paper document by a reliable source to delivery via a third-party certificate authority. An e-recording statute must facilitate ongoing maintenance and development of standards by those involved in the process, those with a vested interest in the viability and reliability of public records, making business and legal decisions. Because of the ever-growing myriad of possibilities, the Mortgage Bankers Association, American Bar Association, American Land Title Association, and others have joined together to create and maintain the Property Records Industry Association (“PRIA”) for the sole purposes of (1) evaluating and setting e-recording standards and (2) educating others in the industry about e-recording. FannieMae has already published an e-mortgage announcement of the technologies that it will not accept because of inability to satisfactorily verify authenticity – even for documents which are not public records.

URPERA and the need for national standards

After years of meetings, research, participation by industry and technology experts, and many significant redrafts, the Uniform Real Property Electronic Recording Act (“URPERA”) was adopted by the National Conference of Commissioners on Uniform State Laws at their August 2004 Annual Convention. It is available on-line at:


(Official Comments and edits by Style Committee were completed but not posted as of press time.)

continued on page 5
During its September 16 meeting, the NCLTA Executive Committee welcomed American Land Title Association Executive Vice President James Maher who sat in on the meeting. This was the first time in 18 years that Maher had attended an NCLTA meeting.

The key issue of discussion was a report from Gary Whaley and Bryan Rosenberg about their visit with NC Insurance Commissioner Jim Long on August 31 (see “President’s Message” on page 1).

At the same August 31 meeting, Bryan Rosenberg informed Commissioner Long of the Florida statute that facilitated the sharing of information regarding fraud. Upon the understanding that this statute allows competitive companies to share this information rather than simply having to report it to the Department of Insurance, Commissioner Long agreed with the merit of such a statute. He will have his staff compare this Florida law to our statutory scheme to find improvements.

Finally Rosenberg gave Commissioner Long and Jackie Darden an explanation of why the Zurich product should be classified as Title Insurance and therefore needing an attorney certification. Jackie Darden reviewed the filing, corresponded with Zurich, and reported back to Rosenberg that she has determined that the Zurich product is not Title Insurance. NCLTA has been in contact with Rich Carlson, an attorney hired by ALTA to monitor mortgage impairment and related products, to see if he can be of any assistance in North Carolina. We will keep the NCLTA membership posted on this issue.

It is readily apparent that we have many common concerns in this industry, and this organization, through its membership and leaders, is seeking to address many of them. Anyone who identifies an issue that needs to be addressed and/or wishes to serve on a committee, please contact me. I look forward to serving as your President during the coming year.
Electronic Recording in North Carolina in 2004 and beyond

continued from page 3

This is an enabling statute, not setting standards but integrating electronic documents and signatures into existing standards. It:

1. Provides that electronic documents and electronic signatures satisfy state law requirements for original documents.


3. Removes the requirement for an embossed or affixed notarial seal so long as the information required of the seal is in the electronic acknowledgment.

4. Allows but does not require a register to accept, index, store, archive, transmit and maintain record for title examiners of electronic documents, while continuing to maintain a paper registry indexed in the same place.

5. Authorizes registers to convert paper documents to electronic format, to accept recording fees electronically, and to agree to procedures in coordination with other departments involved (such as the tax department).

6. Most importantly: Opens the door for an ongoing electronic recording commission to be created or a state agency be assigned responsibility for maintenance of ongoing standards. The determination of which type of entity, under whose auspices, the statutorily required composition, and imposition of statutory requirements for ongoing consideration of PRIA and other states’ standards, are subjects of significant importance to the recording industry.

The stated goal of URPERA is “the need to promote uniformity of the law with respect to” electronic recording among all states.

North Carolina’s activities

Anticipating that adoption, the North Carolina Legislature had adopted as Part VI of the Studies Act of 2004:

SECTION 6.1. The General Statutes Commission shall study the issue of electronic recordation, specifically with regard to real property documents and other documents filed with registers of deeds. The Commission shall study methods for establishing uniform legal standards for the receipt, recordation, authentication, preservation, and retrieval of electronic documents. The Commission shall include in its study consideration of the Uniform Real Property Electronic Recordation Act drafted by the National Conference of Commissioners on Uniform State Laws as well as other resources on electronic recording standards from national organizations such as the Property Records Industry Association (PRIA) and the Mortgage Industry Standards Maintenance Organization (MISMO). The General Statutes Commission shall report its findings and recommendations and any legislative proposals to the 2005 General Assembly upon its convening.

SECTION 6.2. The Secretary of State shall study the issue of amending the notary public laws in order to modernize and simplify their administration. The study shall also address the issue of electronic notarization. The Secretary of State shall report its findings and recommendations and any legislative proposals to the 2005 General Assembly upon its convening.

The Secretary of State established the NC Electronic Recordation / Notarization Advisory Council (the “Council”), composed of representatives from the NC State Bar (Julius E. Banzet, III), NC Bar Association Real Property Section (Don Lampe), the NC Land Title Association (Nancy Ferguson), the NC Association of Registers of Deeds (Amanda Garrett), and other agencies and associations involved in real estate recording and public records maintenance.

Both the General Statutes Commission and the Secretary of State’s Advisory Council have sought information from, heard presentations by, and had in-depth discussions with industry experts, including:

- Carmen Bramante, an nationally recognized leader of real estate records technology issues, who recently left Fannie-Mae to open his own consultancy, CDB Consultancy, and is co-chair of the PRIA Technology Committee

continued on page 6
At Press Time …

A new check-processing law that goes into effect on October 28, 2004, may require a review of a law firm’s arrangements with its escrow depository institution on check stock and float. “Check Clearing for the 21st Century Act/Check 21” is intended to increase the efficiency of check processing by banks, allowing them to create “substitute checks” (images of the check with payment information that can be transmitted electronically) which will, in effect, shorten the check clearance time period. You may read more at:


The Advisory Council is drafting a proposed new article to Chapter 10A of the North Carolina General Statutes which will address electronic notarization requirements. Issues discussed include: Additional educational requirements, electronic standards (industry-led vs. statutory) for notary acknowledgments consistent with paper requirements, possible new form facilitating paper and electronic acknowledgment, journal requirements (consistent with changing national standards), on-line verification of active commissions (already in process, similar to the corporations database). All decisions are being made after deliberation regarding URPERA, other states’ standards, and real estate industry activities. However, e-notarization will affect far more than just real estate transactions, so that broader perspective is being constantly considered as well.

Where are we now?
The General Statutes Commission meets to review URPERA and consider its study commission report at its regular meeting on December 3, 2004 (a public meeting).

The Secretary of State’s Advisory Council on URPERA is scheduled to meet on the following Tuesdays: 11/30, 12/14, 1/4/05 and 1/11/05 (Public meetings, though attendees should contact Patty Holloway with the Secretary of State’s office prior to the meeting to assure seating.)


Convention Calendar

ALTA Tech Forum 2005
April 17-19, 2005
Portofino Bay Hotel at Universal Studios
Orlando, FL
www.alta.org/meetings/techforum/index.cfm

ALTA 2005 Federal Conference
March 6-9, 2005
Willard Intercontinental Hotel
1401 Pennsylvania Avenue, NW
Washington, DC 20004
www.alta.org/meetings/federal/index.cfm

NCBA 2005 Real Property Section Annual Convention
May 6-7, 2005
The Greenbriar
White Sulphur Springs, WV
www.realproperty.ncbar.org/Calendar/Calendar/default.aspx

NCLTA 2005 Annual Convention
September 15-17, 2005
The Grove Park Inn
Asheville, NC
www.groveparkinn.com
www.asheville.com
www.exploreasheville.com

ALTA 2005 Annual Convention
October 6-9, 2005
New York Marriott Marquis
New York, NY
www.alta.org/meetings/annual/index.cfm

NCLTA 2006 Annual Convention
September 14-16, 2006
Wild Dunes Resort
Isle of Palms, SC
www.wilddunes.com
Practical aspects of E-Recording

What is an “electronic signature”?  
Any “signature” which a person adopts as their signature to the particular document being signed, if done or delivered electronically, is an electronic signature. Some examples: The signature pad at Lowe’s or the grocery store after you swipe your credit card. The signature block that automatically appears (or your typed in name) at the end of an e-mail. A click box when ordering items or filling out forms on-line. The sender’s identification or initials on a fax transmission. Delivery via a certificate authority, an independent third party which transmits only after verifying passwords, encrypted information with sender’s access only using a unique USB hardware and a designated computer (so-called “PKI” technology).

Will all Registers of Deeds be required to accept every type of electronic transmission?  
No. Registers are still local officials, governed by local governmental decisions and subject to local governmental budgets. Though the URPERA commission would review types of technology and presumably provide education, information, and technological assistance, the Registers can and already are adopting technology based on their own needs and resources. Many find this an excellent opportunity to review their entire workflow process and software upgrades; others will adopt a technology that simply works with their existing systems. A portion of the increases in recording fees a few years ago was legislatively mandated to be applied toward new technology, which will include e-recording upgrades.

Will all recordings have to be electronic?  
No. URPERA authorizes but does not require electronic recording. The electronic recording system would be running simultaneously with (and not outside of) the regular recording hours of the recording desks for paper documents, just as another queue for recording. Document number, book, and page or other recording information will be assigned in this queue, integrated in whatever process the Register already has for paper documents.

How would an “electronic document” recording operate?  
The actual recording process will be totally dependent on the type and sophistication of the system used by the particular Register. The electronic document would be created by the drafter/sender. This could be as simple as Word or WordPerfect, to as sophisticated as SmartDocs format adopted by the Mortgage Industry Standards Maintenance Organization, MISMO, using xhtml “tags”. (Some familiar comparisons: “Tags” are similar to “Codes” in WordPerfect, which tell the document how to appear but do not actually appear unless the user checked “Reveal codes.” Or internet users sometimes copy and paste information from e-mails or web sites to Word and might see html tags or letters surrounded by “<“ or “>” which were the instructions to the web site on how to information should appear, but did not appear in the web site itself.)

The electronic document would be signed electronically by the appropriate parties (see above) and acknowledged by an e-notary, then transmitted to the office of the Register of Deeds. The document would come into the Register’s office electronically, using a software system consistent with that chosen by the Register. Depending on the Register’s software, certain “tagged” information could be automatically indexed, such as the grantor, grantee, reference to prior document (for cancellations or releases, for example), brief legal description and the notary information which the Register must “certify” – the same information that the Register must address under applicable “paper” recording statutes. However, all data and information would be in the electronic document capable of being viewed and printed by the later title examiner, just as paper versions are viewed in electronic form on CD-ROM or microfilm computers now.

How would the recording fees and excise tax stamps be paid?  
Technology to “pull” funds from an account is already available and in use in many settings, such as on-line banking, automatic utility payments, etc. However, the Bar will have to address this issue in the context of the Good Funds Settlement Act and RPC 191. Approved methods will need to be developed for the county to pull funds but without providing outside access to attorneys’ trust accounts. This type of transfer could actually be much more efficient for attorneys and for counties, especially those requiring tax payments prior to recording, because the payment would only be withdrawn after the documents were recorded and funds would automatically be allocated to the various applicable departments.

How would title updating be handled, prior to recording?  
Possibilities might include the need to have a title examiner on-site at the registry to update or to call the office to hit the “send” button (though avoiding the travel back and forth to the office for original documents). But, more effectively, as Registers are able to accomplish real-time indexing of paper and electronic documents, reliable, real-time, on-line access may be made available to do the examination and update remotely. Other states’ offices that are using this technology are using a subscription membership fee, so far. Of those counties that are on-line in North Carolina, most if not all are not real-time because of gaps between the time of receiving the original “paper,” indexing it on the computer, and quality control processes delaying permanent indexing. And the on-line systems all have disclaimers that they are “unofficial,” some even posting this across the face of the documents themselves. Again, this will involve workflow and technology changes for the public offices.
New 2004-2005 Executive Committee takes office

During the September 18, 2004, annual membership meeting, the following officers were elected to serve on the Executive Committee for the 2004-2005 administrative year:

President ............................................................... Gary Whaley, Investors Title Insurance Co.
Vice President .......................................................... Sarah Friede, Statewide Title, Inc.
Treasurer ................................................................. Jonathan Parce, Stewart Title Guaranty Co.
Secretary ................................................................. Jeffrey Hrdlicka, Chicago Title Insurance Co.

Bryan Rosenberg will continue on the Executive Committee as Immediate Past President. David Shearon was re-elected Attorney Section Representative.

Following the election, President Gary Whaley appointed Jay Hedgpeth of The Title Co. of North Carolina as General Counsel.


Around the State

On October 4, Frank Coman, Candice Williams, and Stacie Jacobs joined The Title Company of North Carolina and will open a second TCNC office in uptown Charlotte. They were previously with the LandAmerica/Lawyers Title office in Charlotte.

NC Joint Land Records Task Force meeting

The next meeting of the NC Joint Land Records Task Force will be Wednesday, November 3, beginning at 10:00 at the offices of Young, Moore & Henderson in Raleigh. Anyone wishing directions or more information can contact Sarah Friede, Senior Underwriter & Legal Counsel, Statewide Title, Inc. 401 Chestnut Street, Ste. E, Wilmington, NC 28401, Phone (910) 815-3430, Toll-Free Phone (877) 815-3430, Fax (910) 815-3494, Toll-Free Fax (866) 815-3494, Email sarah@statewide.title.com
Second Sam Mann Memorial Award presented

For only the second time, the Association presented the Sam Mann Memorial Award during the annual convention banquet, September 17, in Charlottesville, Virginia. As the first recipient of the Award and Association, President Bryan Rosenberg made the presentation to Sarah M. Friede of Statewide Title’s Wilmington office. Rosenberg made the following remarks:

It is an honor and a privilege to present this second Sam Mann Memorial Award to someone who has impressed us all with her personal qualities. I am going to quote from the narrative accompanying her nomination: “Sarah is a new generation of leader in the title industry in both age and in time in the industry. … Her smile puts people at ease and gives genuine warmth, making her pleasant company. She has not been reluctant to accept volunteer work. She was instrumental in reviving the New Hanover County Real Property Bar meetings, has served diligently as NCLTA’s representative on the NC Joint Land Records Task Force, and has participated on the Association’s executive board. She does this not simply as a resume filler but to accomplish things for the good of the profession. When Sarah entered the profession, she was concerned about filling Sam Mann’s shoes, but she did not realize that she did not need to; all she needed to do was to be Sarah.”

Friede accepted the Award with an emotional and heartfelt expression of appreciation since she was hired into the title industry to replace Sam Mann at The Title Company of North Carolina’s Wilmington branch when he passed away in 1999 at the age of 39 from brain cancer.

The purpose of the award is to recognize a new generation of leaders in the title industry. It honors a person fairly new to the title industry, as Sam was. The award winner demonstrates the special qualities of Sam Mann in terms of contributions, encouragement, and support of the title industry. These include:

- 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

Thank you to RPS Convention sponsors

Appreciation is expressed to the following 9 companies who contributed to the 2004 Real Property Section annual convention as sponsors: Chicago Title Insurance Company, Commonwealth Land Title Co. of NC, Fidelity National Title Ins. Co., Investors Title Insurance Company, LandAmerica/Lawyers Title, Statewide Title, Inc., Stewart Title of the Carolinas, Surety Land Title, and The Title Company of North Carolina.

Also, a special thank you is extended to The Title Company of North Carolina for allowing NCLTA to use its exhibit table at the convention for display of Attorney membership materials. Several attorneys have joined the association as a result of learning more about NCLTA at the RPS Convention.
The following five manuscripts from the 2004 convention held in Charlottesville are housed in a 2” binder and separated by tabs. Within each tab, some of the manuscripts are further separated by colored slipsheets.

“2003-04 Case Law Update” .................................................. Patrick K. Hetrick

“Underwriting Issues” .......................................................... Panel

“New ALTA Forms and Endorsements” ......................... Paul L. Hammann

“Uniform Residential Mortgage Satisfaction Act” .......... Nancy Short Ferguson

“Claims Stories” ................................................................. Stephen B. Brown

Please send me the 2004 Convention manuscripts (quantities are limited):

No. _____ @ $75.00 each  (Total Package -- one of each manuscript listed above.)

Total Enclosed = $_________

Please make checks payable to “NCLTA” and enclose with your order. Mail to: NCLTA, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607-5151.

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Slow and steady won yesterday’s race...
fast and smart wins today’s.

The story of the Tortoise and the Hare teaches a great lesson to those who stay the course. Slow and steady won that race. Great general idea, but this probably isn’t true for your business. In today’s fast-paced world, every minute counts. Getting the job done right the first time, before your competition, means you win. Closing real estate transactions faster means you can concentrate on that next piece of business. Run fast and finish first with SoftPro’s ProForm.

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