



Carolina Update

NCLTA's Exclusive Report to its Members

President's Message

By Candice E. Williams



As I prepared to write my last President's Message for NCLTA, I had to think back on all that has transpired over the past year. The word I have used over and over in my previous President's Messages, has been "initiative." I used the word

in its definition as a plan or project, but in this message I will use it for its other meanings – resourcefulness and ingenuity. If it wasn't for the resourcefulness and ingenuity of our members, we would not have been able to bring FEO 13 as far as we have or be able to introduce Senate Bill 803 – our act to address hidden liens, just to name a few of our projects.

I have heard a lot of negative comments about our projects this past year from members and non-members. Not everyone agrees with FEO 13; some think Senate Bill 803 will never happen because of our past experience with trying to revise the mechanics lien law; and some think the new lien affidavits are over extensive. I've seen comments on the Real Property LISTSERV that made me cringe and statements sent out by local title companies that were misinformed at best. Without differing view points and debate, you can't grow or see a project to its fullest potential. However, with all of the attention we have spent debating, we have not thanked those people who have given their time and put in the effort to make these projects happen, not just for themselves but for consumers, the industry, and our organization. I want to thank the following who have put their resourcefulness and ingenuity to use:

- Debbie Brittain for chairing the Cocktail Reception at the Real Property Section Annual Meeting;
- Chris Burti for chairing the Legislative Committee;
- Taby Cruden for chairing the Forms Committee and for Taby and the following who put in countless hours drafting and revising the current Lien Affidavits: Steve Brown; Chris Burti; Nancy Ferguson; Jeffrey Johnson; Ned Manning; Ed Urban; and Ryan Wainio;
- Jim Gale for Chairing the Membership Committee;
- Matt Powers for being our representative on the Electronic Recording Committee;
- Ryan Wainio for being our representative of the North Carolina Land Records Task Force;
- Jay Williams for overseeing the mark-up of the 2008 Study Guide;
- Nick Long and Kim Rosenberg for assisting David Ferrell with the Railroad Corridor Bill; and
- Kim Rosenberg for chairing the Loss Prevention Committee ("LPC") and the following members of the LPC who continue to work on FEO 13, Senate Bill 803, and the ALTA Mutual Indemnity Letters: Steve Brown, Nancy Ferguson, Carolyn Clark Snipes, Ken Stone, and Hugh Talton; and Jay Hedgpeth for his recent assistance on the Indemnity Letter.

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Compromise NC Railroad Corridor Legislation Proposed (H116)

By Nick Long, State Counsel, The Title Company of North Carolina

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I have served as a member of the North Carolina Land Title Association's Legislative Committee for the 2006 and 2008 sessions of the General Assembly. One of the first things you learn is that stopping bad legislation is at least as important as promoting good legislation.

In 2008, we were confronted with a proposal by the NC Railroad to radically expand the rights of the railroads to control (and expand) their corridors. The Railroad Corridor Management Act was drafted by the NC Railroad, and as originally written, constituted a wish list from the state-owned Railroad as to what it wanted to be able to do. Given that the railroads are looking at adding tracks and expanding their rights-of-way for the first time in nearly sixty years, this legislation was considered likely to move forward.

The bill was not presented to the legislature in the 2008 "short" session, but was sent to a study committee for review and revisions for possible submission in the 2009 session of the General Assembly. The other major railroads in the state joined the effort by the NC Railroad to alter significantly the management and planning of railroad corridors.

NCLTA decided to appear at the Study Commissions for both bills last fall and express our concerns.

Legislative Committee Chair Chris Burti and NCLTA Lobbyist David Ferrell agreed that much of what the bill contained was objectionable, but there were three areas of particular importance to our Association. First, was the provision for changing the abandonment process for railroad corridors, basically wiping out N.C.G.S. §1-44.1 and the presumption that failure to use the corridor for a period of seven years constituted abandonment. Of special concern was language which might allow the railroads to contend that corridors which had been abandoned would be subject to being "re-opened" retroactively by the railroad, even though landowners had exercised their rights under §1-44.1 and our members had insured titles based on the statutory presumption that the corridor had been abandoned.

The second area was the vagueness of the description of many railroad corridors, since many of them are based on legislative grants and charters which pre-date the passage of the Conner Act in 1885. Everyone who has had to deal with a title adjoining a railroad track knows the uncertainty with regard to the actuality of locating a railroad corridor on the ground.

The final problem was the recent aggressive actions by the NC Railroad to require license agreements from landowners who had been occupying the railroad corridor for years, often with the express agreement of the railroad. The proposed legislation would have made this process even more onerous for the landowners.

There were other issues that were objectionable, including giving the railroads veto power over any development within fifty feet of the corridors as well as any attempt to construct a road crossing the railroad corridor, (whether or not it was being actively used by the railroad), but we felt those issues were less "title oriented."

Through the study committee process, NCLTA was recognized as one of the stakeholders and was allowed to provide significant input into the proposed legislation. Although our attempt to have the changes to §1-44.1 removed from the bill were unsuccessful, we were able to add provisions requiring the railroad to file a declaration of abandonment in the county where any railroad corridor is abandoned, bringing a level of certainty which had been sorely lacking previously.

Our biggest success was in convincing the legislators on the panel that the additional rights to control the railroad corridors should be coupled with a requirement that the railroads make it clear where they contend the corridors are located. We tried to require recording of the railroad's corridor maps in each county, but that is apparently too expensive.

The bill allows NC's railroads to file their corridor maps with NCDOT, and they will be available over the Internet. A notice of the map filing will be filed in the local Register of

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Compromise NC Railroad Corridor Legislation

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Deeds office. To be able to exercise the expanded control rights in the railroad corridor, the railroad must first record a corridor map with the Department of Transportation, making the location of the corridor much more certain, and reducing the risk faced by title insurers.

During the Study Committee process, we were unable to get much traction for NCLTA's proposal to have the legislation provide a method of amortizing existing encroachments in the railroad corridors. We were not able to get language which would avoid piece-meal litigation of disputes regarding the extent of the corridors. However, we were able to make the panel (and the railroads) aware of the significant economic harm the aggressive stance taken by the NC Railroad was causing by requiring landowners believed to be encroaching in the railroad right of way to pay a license fee and sign a license in order to maintain the alleged encroachment.

Although the NC Railroad took the initial position that they would not consider addressing the encroachment issue, we continued to lobby legislators about the need to address this issue as a part of this committee's work. We worked with Reps. Barnhart and Steen who were interested in the issue, and ultimately, with Rep. Steen poised to run an amendment on this issue, the NC Railroad agreed to address the issue. Their Board of Directors unanimously adopted a new policy on how to deal with encroachers which provides that in most cases they will not charge a license fee and in some cases will pay the landowner if a structure must be moved. Given where we started with this issue, we believe this is a good result.

The Study Committee reported out a compromise bill, which was introduced in the 2009 "long" session as House Bill 116. It still has a number of problems, and may not make it through to become a law, but it has passed the House and is now in the Senate's Judiciary I committee. You can read the proposed legislation at: www.ncleg.net/Sessions/2009/Bills/House/PDF/H116v4.pdf.

As with most legislation, it is not what NCLTA would have drafted, but the significant compromises we were able to work out makes the current proposal much better than what began the process. As always, if you have significant concerns, contact your own Representative and Senator about pending bills. Feel free to contact me about this bill or Chris Burti about other legislation being considered during the current session.

President's Message

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A special "Thank You" to all of our title insurance, affiliate, and attorney members, who continue to support our organization, even during a year with assessments and increased costs; to Penney De Pas, our Executive Director otherwise known as "the glue who keeps us together"; and to David Ferrell, our Lobbyist, who did an outstanding job this year for NCLTA.

I look forward to seeing everyone at Wild Dunes in September for our Annual Meeting. My best wishes to you and your families for a happy and safe summer.

Around the State

The Raleigh offices of **Fidelity National Title Insurance Co., Lawyers Title Insurance Co.,** and **Commonwealth Title Insurance Co.** have been consolidated into a new office at 421 Fayetteville St., Suite 215, Raleigh, NC 27601. The mailing address and phone numbers remain the same.

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Stewart Title Guaranty Company has appointed *Jane Barkley* as Interim North Carolina Agency Services Manager. Jane has been with Stewart for 10 years and currently serves as North Carolina State Counsel.

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Jeff Hrdlicka has been appointed State Counsel for the **Fidelity National Financial** brands of title insurance in NC. The position focuses on obtaining over limit approvals and coordinating underwriting matters with Fidelity's National Underwriting Department. A former President of NCLTA, Hrdlicka also continues to work in his current position as Vice President and Senior State Counsel with **Chicago Title** in Greensboro.

• • •

New Attorney Member email addresses:

Don Speckhard:

dspeckhard@speckhardlaw.com

David Lee Zuravel:

mhz@mhzattorneys.com

• • •

West-Thompson has just published the 2009 revised version of the two-volume North Carolina Real Estate with Forms, 2d (North Carolina Practice Series) by *Nancy Short Ferguson, Chicago Title Insurance Co., Edmund T. Urban, Urban Title Co., Inc., and A. Grant Whitney, Jr., Parker Poe Adams & Bernstein.* Ferguson and Urban are former presidents of NCLTA and Grant Whitney is an Attorney member of NCLTA. www.west.thomson.com/productdetail/148936/40125567/productdetail.aspx#

Update on “Mechanic’s Lien” Legislation

By David P. Ferrell, NCLTA lobbyist, Vandeventer Black, LLP

The NCLTA-sponsored legislation to address “hidden” mechanic’s liens, Senate Bill 803, is pending in the Senate Judiciary I Committee. Senator Rand, the bill sponsor, agreed to add a fee to the bill so that it could be considered later this legislative session. Initially, Senator Rand requested the construction groups opposed to the bill work with NCLTA to see if a compromise solution could be reached during this legislative session. The opposition groups felt the issue needed to be studied, did not want to have to do so under the short time constraints of this session, and suggested to Senator Rand that the issue be studied between the 2009 and 2010 legislative sessions. Under intense lobbying and pressure from the opposition groups, Senator Rand agreed to have the issue studied between legislative sessions.

The opposition groups have committed to us and Senator Rand that they will in good faith study the issue, and Senator Rand wants the issue studied and is not sending the bill to a study committee as a way to “kill” the bill and the issue. It seems many groups feel our proposal has merit and may work, but they want time to study it and be sure it works for their members. We will work with Senator Rand’s office to establish the study committee and advocate for a solution to the “hidden” mechanic’s lien issue in the study committee process.

May Executive Committee Meeting Focuses on Liens, Convention, and Loss Prevention

The NC Land Title Association Executive Committee met on May 5. After ratifying approval of filing a second *amicus curiae* brief in the case of Johnson v. Schultz for the Supreme Court and re-appointing Matt Powers as NCLTA’s liaison to the Secretary of State’s Electronic Recording Council, the Executive Committee discussed providing training on the new lien forms. After considering the proposed convention agenda from Convention Chair Carolyn Clarks Snipes, Executive Director De Pas was authorized to renegotiate the contracted sleeping room rate at Wild Dunes in an effort to lower it.

The Executive Committee authorized the NCLTA staff to collect a dues special assessment from title insurance underwriters based on 2008 market share to fund lobbying for the “Hidden Mechanic’s Lien” statute. Legislative Committee Chair Chris Burti reported on other legislation under consideration by the General Assembly. North Carolina Land Records Task Force liaison Ryan Wainio reported that a committee made up of the members of the Land Records Task Force and the Real Property Section of the Bar Association was formed to work with the NC Register of Deeds Association to look at minimum indexing standards. General Counsel Burti suggested amending the bylaws to allow the Executive Committee to meet by electronic conference. Loss Prevention Chair Kim Rosenberg provided an update to the status of the NC Bar’s Ethics Opinion on attorney audits, noting that the Opinion had been modified to allow a title company to review only records related to that company’s title insurance and would be re-published for public comment.

The next meeting of the NCLTA Executive Committee will be held on Thursday, September 17, 2009, at Wild Dunes in the Board Room of The Boardwalk Inn, beginning at 3:00 p.m.

Convention Calendar

NCLTA 2009 Annual Convention

September 17-19, 2009

Wild Dunes Resort

Isle of Palms, SC

www.wilddunes.com

2009 ALTA Annual Convention

October 21-24, 2009

The Breakers

Palm Beach, FL

www.alta.org/meetings/annual/index.cfm

NCLTA 2010 Annual Convention

September 16-18, 2010

Hilton Garden Inn

Kitty Hawk, NC

www.hiltongardeninn.hilton.com/en/gi/hotels/index.jhtml?ctyhocn=ORFKHGI

2010 ALTA Annual Convention

October 13-16, 2010

Manchester Grand Hyatt

San Diego, CA

www.alta.org/meetings/meeting.cfm?meeting=SAM2010Ann

NCLTA 2011 Annual Convention

September 15-17, 2011

The Grove Park Inn Resort & Spa

Asheville, NC

www.groveparkinn.com

NCLTA 2012 Annual Convention

September 13-15, 2012

Wild Dunes Resort

Isle of Palms, SC

www.wilddunes.com

September Convention Packed With Information

Registrations are starting to arrive for the 2009 NC Land Title Association Annual Convention at Wild Dunes Resort on the Isle of Palms, SC, www.wilddunes.com , September 17-19.

You won't want to miss this comprehensive, 6.25-hour CLE-approved, program, including both our standard update sessions as well as information on coverage litigation, mechanics liens and contractor claims, contractual issues, lien forms and the latest legal and regulatory topics around the country, providing a solid continuing education experience for those attending.

Wild Dunes is fast becoming a favorite with NCLTA. Elegant yet casual with a low-country flavor, The Boardwalk Inn provides the seclusion of a private, gated community with easy access to the beach. The Resort has **reduced** its originally contracted **room rate** so our economy-impacted industry can relax poolside or on the newly restored sand, visit the shops on the boardwalk or in Charleston, play golf on the oceanfront Links course, or just chill out on your balcony. Don your golf shoes, your swimsuit, or your tennis shoes. Or you can be adventurous with water sports or sophisticated in town. For more information about the area, visit www.charlestoncvb.com/visitors/triplanner/seedo_citiestowns.html?type=1&category=1&sub_category=4



The 4-Diamond Boardwalk Inn and villas at Wild Dunes Resort with swimming pools.

We have a relatively small room block and we anticipate a large demand for sleeping rooms and other amenities during this time period. The last day to make your **hotel reservations** is Monday, **August 17**, to obtain the \$219 single/double rate, but we urge you to make them sooner. The deadline for **convention registration** with NCLTA is **August 28**.

Our golf tournament will be played on the Tom Fazio-designed, ocean-view, Links golf course. (*Golfers who wish to request pairings should note that on their registration form.*)

Make your plans now to join your friends and colleagues at the NCLTA convention on the Isle of Palms. Return your reservation form to the Boardwalk Inn and your registration form to NCLTA today!

Thanks to Our Sponsors

Golf Tournament

Pendergrass Law Firm, LLC, Raleigh, NC

Thursday Welcome Reception

SoftPro Corp., Raleigh, NC

Friday Continental Breakfast & Refreshment Break

Horack, Talley, Pharr & Lowdnes, P.A.,
Charlotte, NC

Saturday Continental Breakfast & Refreshment Break

Roberts & Stevens, P.A., Asheville, NC

CLE Binders

Carruthers & Roth, P.A., Greensboro, NC

Friday Pre-Dinner Reception

Smith Moore Leatherwood, LLP,
Raleigh, NC

Friday President's Reception

Johnston, Allison & Hord, P.A.,
Charlotte, NC

Musical Entertainment

Nelson Mullins, Riley & Scarborough, LLP,
Raleigh, NC

reQuire Release Tracking

Speaker Presentations

Boxley, Bolton, Garber & Haywood, LLC,
Raleigh, NC

Brooks, Pierce, McLendon,
Humphrey & Leonard, LLP,
Greensboro, NC

Nexsen Pruet, PLLC, Charlotte, NC

Roberson, Haworth & Reese, PLLC,
High Point, NC

Simplifile

Ward and Smith, P.A., New Bern, NC

Wishart, Norris, Henninger & Pittman, PA,
Burlington, NC

Wyrick, Robbins, Yates & Ponton, LLP,
Raleigh, NC

Registration Packets

White & Allen, P.A., Kinston, NC





IMPORTANT MESSAGE

Did You Know?

The new Real Estate Settlement Procedures Act (RESPA) requirements, issued by the U.S. Department of Housing and Urban Development, became effective as of January 16, 2009. As a result of this new rule, lenders may begin using the new Good Faith Estimate as determined by the U.S. Department of Housing and Urban Development. This means closings may be done using either the new or old HUD-1 and HUD-1A settlement statements, as dictated by the lender. If a lender is using a new GFE, agents MUST use the new 2009 HUD-1 and HUD-1A to be compliant with the new rules.

SoftPro is Here to Help.

It is critical that your closing and title software is compatible with both the old and new 2009 HUD-1 settlement statements during this transitional time. If your current closing software provider isn't up to speed with the new changes, contact SoftPro today. We are more than ready for this important transition and can help you stay up to date.

To learn more about this important new transition and how SoftPro can help, please visit <http://www.softprocorp.com/RESPA>

BE PREPARED.

Don't lose business because you're not ready for this transition!

Contact SoftPro today at **800.848.0143**

