



# Carolina Update

NCLTA's Exclusive Report to its Members

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## [President's Message](#)

By: Marc Garren



The Holiday Season has come and gone. I trust that everyone is recharged after spending some relaxing, care free, worry free, anxiety free, time with your families. Now it is back to the grind. We are excited to see what the upcoming year has in store for NCLTA.

I had the privilege of attending the 2017 ALTA Convention in Miami, Florida last October. It was a great way to meet others in our industry and learn more about ALTA and all they do for us. Cyber fraud was a big topic. Just a note- If the wiring instructions change please verify the change by calling the recipient at a predetermined number. Make sure everyone in your office knows this rule: Verify, Verify, Verify!

Our industry continues to be challenged by change. We are very fortunate to have many volunteers who gladly serve on many committees that help to further our interests. Your Legislative Committee consisting of Kim Rosenberg, Nick Long and David Ferrell continues to work hard and stay out in front of issues important to our organization. As we approach a short legislative session some Bills on our radar are the Manufactured Housing Bill, where some technical corrections are needed, Notice of Settlement Act, a possible Condo curative bill, and a bill to define what exactly is purchase money when dealing with a deed of trust. I also want to mention how hard Nancy Ferguson is working on various committees, particularly the Legislative Committee. If there is a piece of legislation that interests you, especially the Notice of Settlement Act or the possible Condo Curative Bill please contact Nancy Ferguson.

Speaking of new legislation, I want to draw your attention to the new North Carolina Uniform Power of Attorney Act. There were some significant changes. Please see Jim Creekman's article in the most recent Real Property Section Newsletter.

Jim Saintsing is continuing to represent us on the Land Records Task Force. This group welcomes ideas and topics that need attention. Ryan Weeks is our representative for the Electronic Recording Council. Our Annual Convention, held September 14-16 at The Greenbrier, White Sulphur Springs, West Virginia was a great time. What a beautiful venue. Weather was great, Venus Williams and Pete Sampras were there, some played golf, and others enjoyed the spa. We all enjoyed the beautiful mountains. Oh yes, there was also 6.25 hours of CLE and I did not see one person fall asleep!

If you have never attended NCLTA's Annual Convention, I strongly encourage you to this upcoming year. Ben Ipock has the privilege of planning the event which will be held in the sand hills of North Carolina at the Pinehurst Resort. Look forward to seeing you all there. The entire weekend is really fun! Tracy Steadman, our Executive Director, finished up her first full year guiding the Board and keeping us in line. She has done a great job and makes everything a lot easier on us. She continues to work hard for us and is already putting together ideas for our upcoming year. Thank you, Tracy!

## Attorney Section Update

By: Jeff Dunham

As the last business day of 2017 literally closes out, I want to take this opportunity to introduce myself as the Attorney Section Representative to the NCLTA board. Seems a little late to do it as I've been the representative since late 2016, and more importantly since I know and have worked with a lot of the NCLTA members. We tend to view the Attorney Representative as conduit for practicing attorneys to communicate with the Association leadership; and I've tried to fulfill that role, bringing practitioners concerns to their title company allies. I'd also like to work the other way too—talking to practicing real estate attorneys about the issues affecting the title industry. So, to the full Members of the Association please feel free to contact me about anything you'd like to let my fellow attorneys know. I have a mass email set up to all attorney members and it has proved very useful in discussing substantive issues, as well as encouraging folks to join the association and to attend the annual convention. Perhaps the biggest issue I heard from practitioners on was seeking amendment to the Lien Agent act.

To my fellow practicing attorneys, I encourage all of you to be active in the Association: attend the Convention (always in a fun place and great for learning and making connections); join the association (please) it is a great value; and encourage other real estate attorneys you know to join. To me the main benefit in membership is developing and strengthening relationships with fellow attorneys and title industry members. But it is without a doubt a great way to be in front of the changes coming in real estate practice—and to have a voice in dealing with those changes.

I've enjoyed being on the board and seeing how hard the other Board Members work and how much they care about real estate issues in North Carolina. Thanks for letting me serve in this position.

# Forms Update

By: Karl Knight

On October 3, 2017, NCLTA secured approval for issuing the revised ALTA 23.1-06 Co-insurance, Multiple Policies, which became final on August 1, 2017. The endorsement, as revised, states that the liabilities of each issuing co-insurer, and co-insurer, may be aggregated using separate ALTA 12 series (aggregation) endorsements, however, the policy liability of each of the co-insuring companies may not be aggregated with policy liabilities assumed by any *other* co-insurer.

In late November, the ALTA Forms Committee announced that the Decertification of the ALTA Commitment Form (6-17-06) has been pushed back to August 1, 2018, giving some relief to parties who were struggling with implementation of the 2016 version before year's end.

On Wednesday, December 6, 2017, the ALTA Forms Committee announced that the 2017 ALTA Short Form Commitment used with the ALTA Short Form Residential Loan Policy had passed through the required comment period without change and was being published in final form with an effective date of December 1, 2017. The ALTA Forms Committee also announced a minor technical correction to both the 5-06 and 5.1-06 endorsement. In each endorsement the word "homeowners" has been changed to "owners." These forms have been filed with the NC DOI and have been approved. The approved versions are available on our website. Lastly, the NCLTA Forms Committee has under consideration whether or not to reinstate the NCLTA Form 4 Partial Lien Waiver. Some of you may recall this form was withdrawn by NCLTA after publication of *Wachovia Bank, NA v. Superior Construction Corporation*, 213 N.C. App. 341, 718 S.E.2d 160, review denied, 365 N.C. 367, 719 S.E.2d 41 (2011), when the Court of Appeals ruled that waiver of one's right to pursue a claim of lien "on account of" the labor and materials furnished up to the date of the waiver did not equate with a waiver of one's "place in line." As a result, the claim of lien litigated in *Superior* maintained its priority over the lender's deed-of-trust despite the waiver, calling into question whether a partial lien waiver could ever be effective under Chapter 44A. In light of recent inquiries, the Committee solicits comment from the membership concerning the possibility of reinstating some version of the Form 4, understanding that any version will need to be narrowly crafted to take into account the court's ruling. Even then, the viability of such a partial waiver will need to be discussed and carefully considered before implementation.

# Legislative Update

By: David Ferrell



Various lawmakers have returned to the General Assembly for interim committee work since they adjourned their last special legislative session in October 2017. The interim is generally the time where lawmakers hash out the preliminary versions of complex legislation they plan to address in upcoming legislative sessions. Typically, that would be the upcoming "short session" which begins May 2018. However, the legislature is scheduled to return to Raleigh for a January 10, 2018 special legislative session. There is currently no public agenda for the January 2018 special session, although there is speculation the legislature could consider various bills to place certain constitutional amendments on the ballot. Legislative leaders have said the January 2018 special

session could last anywhere from a day to a week. The list of items the legislature can address in January 2018 is similar to previous adjournment resolutions but no longer contains “impeachment proceedings”. Eligible matters when lawmakers return in January include:

- Revising the Senate and House legislative districts;
- Revising the judicial divisions of the State, the Superior Court districts, the District Court districts, and the prosecutorial districts;
- Revising districts for cities, counties, and other political subdivisions of the State;
- Constitutional amendments;
- Veto overrides;
- Appointments or confirmations,
- Bills responding to litigation;
- Adoption of conference reports;
- Bills affecting the budget;
- Local bills that met crossover;
- Bills relating to election laws;
- Bills returned on or after Wednesday, June 28, 2017, to the chamber in which the bill originated for concurrence.

Interim study committees met during the first half of December 2017 to address possible policy proposals affecting education, transportation, judicial reform, healthcare, agriculture, and the environment, among other subject matters. There is a study committee appointed to study the issues surrounding the creation of a mediation and arbitration board to resolve disputes between the owners of property located in a homeowner’s association and the governing entities of such homeowner’s associations. Also, there is a study committee appointed to study dispute resolution options for local governments and owners and developers of property regarding fees and charges set by local governments for water and sewer, proper funding of infrastructure, and monitoring and properly maintaining aging water and sewer infrastructure. These two study committees have not yet held meetings, but are expected to meet in advance of the 2018 legislative session beginning in May. In terms of news coverage, judicial election reform has been the predominant story. Aside from redrawing state judicial districts, which have not been changed in decades, lawmakers are also weighing options to reform how the State selects its judges. Currently, judges are elected, but potential reforms under consideration could include merit selection of judges, with appointment by the Governor or by the legislature. Any major changes would require a Constitutional Amendment that would go before the people on an election ballot for final approval. The Senate Select Committee on Judicial Reform and Redistricting is scheduled to meet on January 3, 2018 to potentially make recommendations for legislation to be considered in 2018.

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# Message from the Editor

By: Jimmica Cofield



It is a great pleasure to have the opportunity to serve as the newly elected editor of the NCLTA newsletter. I hope you enjoyed the fall edition. One of my goals is to have the newsletter informative and a useful resource to all. Please feel free to submit any ideas or topics of interest for future newsletters and thanks in advance for your contribution. Look forward to your suggestions and ideas as we work as a team to make the newsletter successful and informative.

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