

Carolina Update

NCLTA's Exclusive Report to its Members

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President's Message

by Nancy S. Ferguson



The times they are certainly "a-changing'" – continually and increasing exponentially! For several years now we have wondered why the Fed wouldn't lower interest rates and when the US economy would weaken definitively. We could

hardly envision a day when a half-point drop at the Fed would barely merit a shrug – or that the twin towers of the World Trade Center would no longer grace the New York City skyline. All of the economic assumptions underlying the budget proposals of both the N.C. Legislature and U.S. Congress, like shifting sands, washed away and left them stranded.

And amid all the chaos, our attorneys are either wondering if they should change their practice area or running at panic level to keep up.

- We are all scrambling to recall the provisions of the Soldiers and Sailors Civil Relief Act (http://www.homeloans.va.gov/docs/26_01_10.doc)
- We are on alert to prevent sales or mortgage of assets by parties named in President Bush's Executive Order whose names we cannot even spell consistently in "American English."
- Ken Harney writes about the newest mortgage impairment insurance product issued by a mortgage insurance (not title insurance) firm, Radian Guaranty, as the latest and greatest improvement for the

mortgage market. (We have responded by forwarding our own letter to Commissioner Long, a copy of which can be obtained from Penney De Pas or Lauren Copan at NCLTA headquarters on request.)

- In a parallel move, the State Bar has become more attuned to the professional advice surrounding real estate closings in the form of 1999 FEO 13 and the proposed 2001 FEO 4.
- Attorneys are required to give their clients yet another federally mandated notice that they will not disclose personal nonpublic information (a concept we used to think of as "confidentiality"). And, of course, neither will we unless our Privacy Statements say so. (Query: How many consumers read all this additional paper on their commitments, policies or closing packages?)
- New York has passed a statute (NYA1872A, <http://alta.org/govt/news/2001/docs/0904a.htm>) prohibiting lender requirement of a particular title insurance company
- *Kiplinger Magazine* publishes a scathing article about how useless title insurance is, to which ALTA responds with zeal (http://alta.org/govt/issues/01/L_wilcox_1001.htm)
- North Carolina is on the forefront of (rather than one of last to join) national trends, such as Anti-Predatory Lending

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President's Message

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legislation, now being considered by many states, Congress and even Atlanta.

Strange, strange days!

What are we doing here in North Carolina? What can and should we be doing?

- Our legislation, House Bill 253 (Certain Manufactured Homes Real Property) as revised (available online at <http://www.ncga.state.nc.us/html>), passed the Senate Finance Committee on October 3, 2001, thanks in large part to the diligence of Chris Burti. Per Chip Killian, the bill passed second reading in the Senate on Thursday, October 4, and is anticipated to pass on third reading when the Senate adjourns again on October 17. It will then be returned to the House for concurrence. We hope it will fly through passage with the Senate and House (as amended) this session. We realize technical corrections will be inevitable. At least we have crossed this watershed.
- Our proposal to the North Carolina General Assembly to eliminate annual reporting requirements on title insurers in North Carolina under Gramm-Leach-Bliley (Senate Bill 461) passed successfully, thanks to the efforts of Don Lampe. However, we are required to give notice of our privacy policies at the commencement of the relationship (whether that be commitment, closing, or final policy, depending on the circumstances). The Real Property Section Standardized Forms committee is considering adding a "consent" by the seller to disclosure of prior coverage by their title insurer in the Offer to Purchase and Contract.
- The speakers at our Annual Convention were exceptional, thanks in huge part to the suggestions and contacts of Joe Parker.
- We have a long list of possible submissions for consideration by the Real Property Section Legislative Committee.
- We will provide comment, as we can, to the Real Property Section and others on mechanics' lien and decedents' estates legislative proposals now being considered.
- Can or should we as an Association want to consider some minimal search and certification guidelines, to provide proactive support of the Bar while educating attorneys and, hopefully, reducing our own avoidable claims losses? As standards of some practitioners deteriorate, the arguments underlying 1999 FEO 13, proposed 2001 FEO 4 and N.C.G.S. 58-26-1(a) become weaker and harder to justify even for the most ardent advocates of our system. The Bar has approached this question, worked diligently, then been unable to implement standards several times in the past few decades. Can we provide added assistance, support and urgency that may help them overcome the barriers to implementation?

We on the Executive Committee hope that each of our members will actively participate in and communicate their ideas, suggestions and needs. This Association has a special place to fill in our industry. Let us do so proactively and constructively, for the benefit of all.

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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NCLTA Web Site Updates



The NCLTA web site (www.nclta.org) now houses the Preliminary Opinion on Title (1-P) and Final Title Opinion (1-F) forms in PDF/Adobe Acrobat format. These forms were jointly copyrighted by the N.C. Land Title Association and the N.C. Bar Association in 1989. As part of the joint copyright agreement, NCLTA title company members were given permission to distribute these forms to their customers and apply their company name/logo.

Other Legislative News

- House Bill 1073 made substantial amendments to the fee structure and format requirements for recorded instruments.
- Senate Bill 790 removed the “HUD-approved lender” provision of the Good Funds Settlement Act, replacing it with registered mortgage broker requirements to coordinate with the new Mortgage Lending Act (Senate Bill 1064).
- House Bill 385 and Senate Bill 842 have substantially changed fees and procedures for registering, amending or otherwise dealing with any business or nonprofit entity that files with the Secretary of State, including corporations, non-profit corporations, limited liability companies, limited liability partnerships and limited partnerships.
- The Judicial and Execution Sale Procedures have been amended by Senate Bill 681, bringing them more in line with the procedures for foreclosure under power of sale.
- Many trustee and fiduciary law changes, including combining the petition and sale procedures for possession, custody and control and sale to make assets in a decedent’s estate, pursuant to House Bill 1070.
- One withdrawn legislative proposal of note was House Bill 716, which would have changed the provisions of N.C.G.S. 28A-15-1. The bill was withdrawn and referred to joint conference committee, including the Real Property Section of the NCBA, due to perceived internal inconsistencies, ambiguities, and the objection of the Administrative Office of the Courts. The Bill will probably be studied, revised and resubmitted in an upcoming Session.
- The Construction Law Section and, now, the Real Property Section of the NCBA are negotiating another redraft of Chapter 44A, Article 2, the mechanics’ and materialmen’s lien statutes. Senate Bills 909 and 912, requiring penalties for fraudulent filing, have languished this Session.
- HUD has proposed new “flipping” regulations under 24 CFR Part 203, *Federal Register* Vol. 66, Page 172, dated September 5, 2001. Comments due date November 5, 2001. (See enclosed/attached article.)

New Executive Committee Takes Office

At the 2001 annual membership meeting of the North Carolina Land Title Association on August 11, the following officers were elected for one-year terms:

President—Nancy S. Ferguson, Chicago Title Insurance Company, Greensboro

Vice President—Christopher L. Burti, Statewide Title Inc., Greenville

Treasurer—Bryan D. Rosenberg, Fidelity National Title Insurance Co. of NY, Raleigh

Secretary—Holly H. Alderman, Investors Title Insurance Co., Chapel Hill

Attorney Section Representative—J. Clark Brewer, Young, Moore & Henderson, Raleigh

William B. Webb, Jr., of First American Title of the Carolinas, LLC, Charlotte, will serve as Immediate Past President and Edmund Urban, The Title Company of North Carolina, Inc., was appointed General Counsel.



2001-2002 NCLTA Executive Committee, (left to right) Nancy Ferguson, Chris Burti, Will Webb, Bryan Rosenberg, and Holly Alderman. Not pictured: Clark Brewer and Ed Urban.

2001 Convention Wrapup

The speakers just kept getting better. A stellar group of individuals spoke to the delegates to the N.C. Land Title Association annual convention on August 10 and 11 at the Charleston Place Hotel in Charleston, SC. Despite record heat, attendance at the convention was near normal capacity, and the hotel food and service were outstanding.

American Land Title Association (ALTA) board member Charles Kovaleski, president of Attorney's Title Insurance Fund, Inc., of Florida, talked about the advantages of being involved in your professional association in order to stay ahead of the competition and better handle the discontinuous changes that are occurring in the title industry. He informed the audience that last October, ALTA recast its strategic plan to include all providers in real property transactions, serving a wider range of constituents with a wider range of services. He also discussed the movement toward portal-to-portal electronic real property transactions, including the e-signatures legislation, Freddie Mac requirements for electronic files for title insurance, and HUD Secretary Martinez's priorities to simplify real estate transactions and offer them at a lower cost. Although both GE Honeywell and Microsoft are bundling services, it does not offer a benefit to consumers as it provides fewer choices and no lowering of costs. Kovaleski noted that the GLB privacy issue continues to be key, with arguments being made that title insurance is a transitory relationship between insurer and insured—rather than the more ongoing relationship for other insurance lines and the definition of non-public personal information. He reported that ALTA now has a Real Estate Settlement Practices Act (RESPA) task force and that the Title Insurance PAC raised \$100,000 last year. He encouraged those in the title industry to meet with their local Representatives and Congressmen and to invite them back to their title plants.

As a twist on the normal lecture-style presentation, Frank McCormick, senior vice president/regional manager for Fidelity National Title Insurance Co. of New York, gave his talk as a review of questions and answers surrounding title issues. One of the most popular presentations, McCormick's "Title

Insurance Workshop" allowed participants to grade themselves on answers to 25 claims case studies. He also addressed "simultaneous resales" (or "flips") and partial failure of title in a boundary line claims. Losses based on diminution of value are little understood outside the title industry. He noted that title insurance addresses four basic areas: ownership, no liens, access, and marketability.



Frank McCormick wishes denied title claimants "...to have a nice day!"

Sheldon Hochberg, a partner with Steptoe & Johnson, LLP, is a national expert with regard to RESPA which was enacted as an alternative to a federal settlement services rate regulation threat from HUD in 1972. He explained that banks, brokers, and builders are seeking financial interests in the title industry through controlled business or Affiliated Business Arrangements (AfBAs). These latter are not considered "kickbacks" if they meet three safe harbors: disclosure, referrer does not require use, and no other thing of value is exchanged. The argument against AfBAs is that they skew the nature of the competition because market share is not determined by service but by who can pay the larger referral fee. However, the real risk will be in class action suits for ongoing practices. Lenders want to change the nature of settlement fees to give the lender the option to guarantee the closing fee/price. In this scenario, instead of a revenue center for lenders, title insurance becomes a cost and

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AfBAs become more attractive. Hochberg also discussed unregulated and unlicensed “mortgage impairment insurance” products, such as ExpressClose that give warranties to the lender based on credit reports rather than on searching title. Hochberg pointed out that North Carolina has a different climate since the closing attorney is separated from the financial interest in a title closing, allowing for lower costs and higher professional Unlicensed Practice of Law requirements and making it more difficult for lenders to import their settlement practices here.

In his annual case law review, Campbell University Real Estate Law Professor Pat Hetrick observed that this year’s cases represented mistakes of judgment or fact rather than errors of law as well as incidences of fraud by brokers and attorneys. He noted that it is difficult to win a case on the issue of access at the NC appellate court level. At the federal level, the U.S. Supreme Court strengthened property rights with several unanimous decisions.

Hetrick also reviewed the following issues: Uniform Deficiency Act (lenders, not owners, are protected through appraisals), wrongful surrender, Uniform Statutory Rule Against Perpetuities (USRAP), and preemptive rights.



Pat Hetrick was pleased to find an “E&O Magazine” in his hotel room.

In a change of pace, human resources consultant Laura Keever provided delegates with a personality inventory and discussed the different aspects of personality types:

- a Where you focus your energy (Introvert/Extrovert)
- b How you collect data (Sensing/Intuitive)
- c How you prefer to make decisions (Thinking/Feeling)
- d How you deal with your environment (Judging/Perceiving)

Nick Long, chairman of the NC Bar Association’s Real Property Section, brought the convention issues

closer to home in speaking about the issues affecting real property attorneys in North Carolina. Chief among them is the push from out-of-state markets for vertical integration—seen by title insurers as “AfBAs” and by lawyers as “multi-disciplinary practice” and compromising of their independence.

Long felt that “One of the most encouraging areas in real estate law has been the recognition in the past few years by the N.C. State Bar of the importance of preserving the presence of the attorney at the closing table,” specifically 1999 FEO 13. Proposed NC 2001 FEO4 holds that competent practice requires the presence of an attorney at the closing of a real estate refinancing as well. Long reviewed the status of pending state legislation, including proposed revisions to the Good Funds Settlement Act (S 790) and Register of Deeds Fee Increase Bill (H 1073) with regard to filing non-standard documents.

Rounding out the convention program was Rob McNeill, an attorney with Horack, Talley, Pharr, and Lowndes, PA, who practices in the area of commercial litigation and dispute resolution with a substantial amount of real estate-related work. He noted that title insurance can only fix monetary claims; more troublesome claims are those about restrictive covenants, easements, and partial failure of title.



Real Property Section Council Chairman Nick Long

Honorary Members Named

The NCLTA Executive Committee has recognized the contributions of two recently retired former members and past presidents who have made a lasting impression on the Association and the title industry as Honorary Members of the association. Honorary Membership requires nomination by the main representative of a title company agent or underwriter and a unanimous vote of the Executive Committee or majority vote of the company members of the association at the annual meeting.



NCLTA Secretary Bryan Rosenberg (center) presents Bill Pittman (left) with Honorary Membership plaque while Executive Director Penney De Pas looks on.

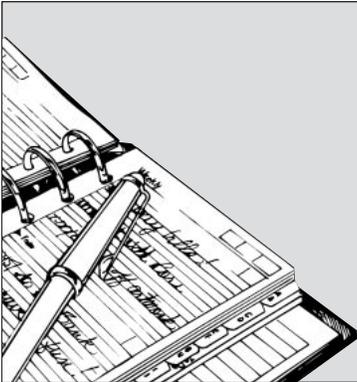
John H. Noblitt

John Noblitt served as NCLTA president in 1987-88 and as General Counsel in 1992-93. John Noblitt's strength has always been in working behind the scenes, effecting change in a low-key manner. However, without John's foresight and recommendations about the association's finances and management and the subsequent actions taken by the Executive Committee when he was in a leadership role in the late 1980s, NCLTA would not exist today. He created a sound foundation upon which the Association could rebuild and a set of guidelines under which we still operate today. In addition, his leadership was instrumental in revising our state's title agent's examination and in passage of the Notice of Settlement Act.

William B. Pittman

When Bill Pittman was elected Vice President of the Carolinas Land Title Association (NCLTA's predecessor organization) in 1973 to replace P. King Holmes, he jumped in with commitment and dedication, chairing the Legislative Committee, chairing the Convention, and representing the association at the ALTA convention. He has always been a stalwart supporter of the title industry and the association, serving an unprecedented three-year term as General Counsel 1987-1990 when the Legislative Committee became a standing committee of the association. He worked tirelessly to keep NCLTA informed of activities in the General Assembly and in the Commissioner's office. In his role as President of several title companies in North Carolina, he has stood as a beacon and a standard for the rest of us.

Convention Calendar



ALTA 2002 Tech Forum
February 17-19, 2002
Fairmont Hotel
New Orleans, LA

NCLTA 2002 Annual Convention
August 8-10, 2002
Sheraton Atlantic Beach Resort
Atlantic Beach, NC

Sam Mann Memorial Award

The purpose of this award is to recognize a new generation of leaders in the title industry. The award winner will demonstrate the special qualities of former NCLTA President Sam Mann in terms of contributions, encouragement, and support of the title industry.

- 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

The award will honor a person new to the title industry. Candidates will be considered annually by the Nominations Committee and those selected presented with a plaque at the annual meeting. The postmark deadline for nominations is April 30, 2002. Please submit your nominations to the NCLTA Nominations Committee, c/o NCLTA, 1500 Sunday Drive., Suite 102, Raleigh, NC 27607-5163, fax 919/787-4916, email: pdepas@olsonmgmt.com, phone 919/787-5181.

Postmark Deadline for all entries is April 30, 2002.

Sam Mann Memorial Award Nomination Form

Nominations Committee
North Carolina Land Title Association
1500 Sunday Drive., Suite 102, Raleigh, NC 27607-5163
fax 919/787-4916, email: pdepas@olsonmgmt.com, phone 919/787-5181

I hereby submit a nomination for the SAM MANN MEMORIAL AWARD for:

Nominee's Name: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ Email: _____

Number of Years Working in Title Industry: _____

Please attach a narrative of why you feel that individual demonstrates the qualities of Sam Mann, a biography or other summary of work history and contributions, reference letters, a photograph, and any other information you feel would be pertinent to the selection committee.

Signed by Nominator: _____ Date: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ Email: _____

NCLTA 2001 Convention Manuscripts Available

From weighty subjects come weighty manuscripts...The handouts from the 2001 NCLTA annual convention CLE program are now available for purchase (including shipping and handling costs) from NCLTA headquarters, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607-5163, 919/787-5181, fax 919/787-4916, email: pdepas@olsonmgmt.com.



NCLTA 2001 Convention Manuscript Order Form

Please send me the following manuscripts:

No. _____ @ \$10.00 Title Insurance Workshop, Frank McCormick (4 parts)

No. _____ @ \$10.00 Changes Affecting Real Estate from Washington, DC: RESPA, VMCs Guaranteed Settlement Services and Beyond, Sheldon E. Hochberg, Esq. (2 parts)

No. _____ @ \$15.00 Annual Case Law Update, Prof. Pat Hetrick (3 parts)

No. _____ @ \$5.00 Personalities, Communication, Diversity & Team Work, Laura Keever

No. _____ @ \$12.50 Real Property Section Update, Nick Long, Jr. (2 parts)

Total = \$_____ enclosed

Please make checks payable to "NCLTA" and enclose with your order.

Name _____

Company _____

Mailing Address _____

City, State, Zip _____

Phone _____ Fax _____

Email _____

For office use only:
NCLTA GL 200-6180

Welcome New Members

At its August 9 meeting, the Executive Committee of the N.C. Land Title Association approved the following new members:

Attorney

David J. Haynes
Brown, Ward & Haynes, P.A.
370 N. Main St., Suite 300
Waynesville, NC 28786
(828) 456-9436
Fax (828) 456-4069

Associate

LuAnne Burch
Title Support Services, Inc.
425 Fourth St.
Annapolis, MD 21403
(888) 268-0422
Fax (410) 268-2714
Email: lburch@titlesupportservices.com

Executive Committee and Annual Meeting Update

During its August 9, 2001, meeting, the Executive Committee of the N.C. Land Title Association changed its procedure for nomination and selection of the Sam Mann Award to allow for more input from the membership. The Executive Committee discussed the 2001 and 2002 convention plans, appointment of a newsletter editor, current legislative issues (including the manufactured housing bill status), and future locations for the annual convention beyond 2003. Staff reported on various updates to the association's web site, new members for approval, and the association's financial status. The Executive Committee approved resolutions to change banks for

the association's accounts and to change investment account managers.

At the annual membership business meeting, Executive Director De Pas reported that the association's agent membership had exceeded the underwriter membership this year with 9 title underwriters, 10 title agents, 75 branches, 19 directory listings, 71 attorneys, 6 associate members, and 4 honorary members. She thanked the title companies that participated in sponsoring the social events at the NCBA Real Property Section annual convention in Williamsburg, April 20-21.