



Carolina Update

NCLTA's Exclusive Report to its Members

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In Memoriam —
John H. Noblitt,
1948-2002

President's Message

Nancy Short Ferguson, President



This has been a most eventful year! At times, it has felt as if the world were spinning out of control! Beginning on the largest possible scale with 9-11 creating havoc in many lives as well as the insurance markets, then in our real estate

world came the surge in publicity (and litigation) about mortgage impairment products, the FTC's pressure on the State Bar, in the economic world news of Enron and Worldcom, the Patriot Act of 2001, the Terrorist Bulletins and lists on the OFAC web site, continuation of Gramm-Leach-Bliley into the newest phase of privacy regulation, strange twists in the local real estate market ending in another surge of attorneys with ethical and financial problems, technology visiting formatting standards (and penalties) upon our attorneys and customers, and now, fingerprinting! While Wall Street is injecting requirements of re-regulation of CPAs, the FTC is coming to North Carolina to deregulate closings. The old mantra "quicker, better, cheaper" has dropped its second component; "better" is now wholly synonymous with "cheaper," based on national standards rather than the highly competitive, low-cost standards we have always maintained in this state. One attorney reminded me of the comment: "Pay now, pay *more* later." Even notary acknowledgments are not immune! This newsletter touches on each of these issues and a few ways that members of our Association are working hard on behalf of all of us—our customers and our insureds—here in North Carolina!

For my own part, I appreciate very much the faith and trust that so many placed in me this year. It has been challenging and exhilarating simultaneously. The experience has broadened my perspective, both in dealing with others in our North Carolina industry and in learning about nationwide issues and practices. As always – we have so much to learn, so many things possible to do, and so little time available! But this Executive Committee, as have its predecessors, has gone to the boards on many important issues this year yet again. My sincerest thanks to Chris Burti, whose leadership, energy and broad knowledge base have mobilized action on so many important issues from mobile homes to FTC concerns; Bryan Rosenberg, who has researched and provided valuable input in financial and legal issues this year; Holly Alderman, who actively pursued the mortgage impairment protections in North Carolina, most successfully; Clark Brewer, whose input on behalf of our Attorney Associate membership has been invaluable for so many years; Ed Urban, who has provided both leadership and intelligent reasoning to legislative and other issues we have faced; Lauren Riley, who has arranged and organized and planned events, meetings, communications, directories; and, of course, Penney De Pas, without whose leadership and direction this year would have been past overwhelming, as many of you know from her 17 years of service and loyalty to all of us!

Ann Vom Eigen, Counsel for the American Land Title Association (ALTA), sent her

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Time to look backward and forward: NCLTA 2002 Annual Convention and 25th Anniversary

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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A very special annual convention is in store August 8-10 at the Sheraton Atlantic Beach Resort in Atlantic Beach, NC. We will be celebrating the association's 25th year since its establishment in 1977, as a result of the splitting up of the Carolinas Land Title Association into the North Carolina and Palmetto Land Title Associations. We will also be evaluating where we are in a year that has seen many changes and inroads into the title industry and real estate law. We will also be looking forward to where we want this industry to go.

Friday morning's session will serve as an update on various issues and activities from the American Land Title Association (by Stanley D. Friedlander, ALTA president-elect), from the case law and legislative perspective (by Campbell University Law School Professor Pat Hetrick), from the Real Property Section (by Adam Foodman, chair of the Real Property Section Council of the NC Bar Association), and from the claims perspective (by Wayne Stephenson of Lawyers Mutual Liability Insurance Company).

Saturday's agenda is organized around a point-counterpoint of special problems in real estate law. Attorney James Pendergrass, Jr., will discuss the "Trustee in Disbarred/Deceased Attorneys' Practices" while Joe

Reinhardt of Chicago Title will illuminate "Trust Accounts and Defalcations" from the title company viewpoint. Finally, Joe Drum of Fidelity National will summarize the latest news on mortgage impairment issues. A total of 6.25 hours of Continuing Legal Education (CLE) credit has been approved by the NC State Bar Board of CLE for these sessions, including two (2) hours of Professional Responsibility (ethics) credit.

Delegates will have an opportunity to relax and interact socially during the Welcome Reception on Thursday, the golf tournament on Friday, Friday's Reception, and Annual Banquet, and Saturday's President's Reception. There will also be opportunities to enjoy the beach, pier fishing, and other coastal pleasures and pastimes. If you don't think you have enough time in your life, then join us Friday morning for a special breakfast workshop presentation on "Time Expansion Principles—You have all the time you need!" by NCLTA Executive Director Penney De Pas.

Registration deadline is July 20 for the early fee and materials are available from the NCLTA web site at <http://www.nclta.org/convention02.html> or by contacting NCLTA at (919)787-5181. The Sheraton Atlantic Beach hotel reservation deadline is July 17.

Around the State

David Baum has transferred to become Georgia State Manager for *Chicago Title Insurance Company*. **Shawn Harlan** has joined Chicago Title in North Carolina as Special Projects Administrator, while **Cathy Erikson** is the new manager of the Lake Norman/Cornelius office.

Susie Crotty has joined the Asheville office of *Fidelity National Title Insurance Co. of NY*.

Ann vom Eigen, Legislative/Regulatory Counsel for the American Land Title Association, expressed appreciation for how helpful **Joe Parker** of *Parker Title Insurance Agency*, Winston-Salem, was in recent visits in the District of Columbia to the North Carolina delegation. Discussions with Congressional representatives focused on RESPA legislation and Predatory Lending. Parker is a past president of ALTA.

Legislative and regulatory issues fill full executive committee agenda

During its May 15 meeting, the NCLTA executive committee discussed plans for the annual convention and 25th anniversary of the association, August 8-11, at the Sheraton Atlantic Beach Hotel.

Considerable discussion time was spent on various legislative proposals, including deed of trust cancellation, future advances, subordination and subrogation, re-recording, and the proposed delay in implementation of the effective date for HB 253 from July 1, 2002, to July 1, 2004, in order to give more time to determine if all the manufactured homes in the county meet the new criteria. Also discussed were the Real Property Section's new deeds form, NCLTA's new declaration of intent form, and a proposal to revise the preliminary and final opinion on title forms (1-P and 1-F).

The executive committee considered but declined to file *amicus curiae* with regard to the Colombo v. Stevenson case. Under regulatory matters, the executive committee considered non-attorneys to request to represent the title insurance industry and NCLTA at the June 7 meeting of the NCSB Ad Hoc Committee Investigatory Meeting.

Ways to work more closely with the Register of Deeds Association were suggested. The distinction between mortgage impairment and mortgage guaranty insurance was further discussed. Drafting a response to Insurance Commissioner's Bulletin was assigned.

The executive committee determined to send the membership directory by email to members in PDF format. Other ways to alert attorneys to the title insurance industry's desire to continue the approved attorney system in North Carolina were discussed as well as items to be included on the association's web site.

Nominations for the Sam Mann Memorial Award, Secretary, and Attorney Section Representative were suggested but no decisions finalized. Based on feedback from prior year convention evaluations, the Boar's Head Inn, Charlottesville, VA, was selected as the 2004 convention site with the dates switched to early fall—September 16-19.

The next executive committee meeting will be held on Thursday, August 8, at the Sheraton Atlantic Beach.

NCLTA web site updates

Two forms related to mobile home real estate have been added to the NCLTA web site under forms, <http://www.nclta.org/forms.html>:

- MVR-46
- Declaration of Intent (PDF document)
- Declaration of Intent (MS Word document)

Convention Calendar

NCLTA 2002 Annual Convention

August 8-10, 2002
Sheraton Atlantic Beach
Atlantic Beach, NC

ALTA 2002 Annual Convention

October 16-19, 2002
The Breakers
Palm Beach, FL

NCBA Real Property Section 2003 Annual Convention

May 2-3, 2003
Kiawah Island Resort
Kiawah Island, SC

NCLTA 2003 Annual Convention

August 7-9, 2003
Williamsburg Lodge
Williamsburg, VA
<http://www.colonialwilliamsburg.org>

ALTA 2003 Federal Conference

April 13-15, 2003

ALTA 2003 Annual Convention

October 22-25, 2003
Arizona Biltmore Resort & Spa
Phoenix, AZ

ALTA 2004 Federal Conference

April 19-21, 2004

NCBA Real Property Section 2004 Annual Convention

May 7-8, 2004
Carolina Hotel
Pinehurst (?), NC

NCLTA 2004 Annual Convention

September 15-19, 2004
The Boar's Head Inn
Charlottesville, VA

Key Regulatory Issues

Mortgage Impairment

The battle continues against “alternative” products which provide limited title and/or lien coverages, while evading the applicable regulations and disseminating inaccurate or incomplete information to lenders, consumers, and regulators. Kenneth Harney has published his third article, “Title Insurers Press States to Block Discount Plan,” lambasting title insurers and praising the Radian product (on-line at www.washingtonpost.com/wp-dyn/articles/A26374-2002Jul4.html). He asserts that the Radian product “cuts title-related fees to the consumer to a flat \$325 per mortgage. The fee includes \$275 for the insurance premium and \$50 for a credit and public records search to establish property ownership.” Yet Radian insists this is not a title product. Harney mentions the “exorbitant” costs of title insurance products and the “well-known incestuous relationships’ among state insurance regulators and title insurance companies.” (I guess no one has visited North Carolina costs lately.)

On the other hand, the Financial Institutions Insurance Association issued an article dated June 4, 2002, entitled “Title Insurance v. Non-Title Insurance Alternatives” by Richard D. Starr, pretty clearly outlining the comparisons, costs and benefits and appearing to favor title insurance (notwithstanding the presumed extra cost). (Available on-line at: www.insurancenewsnet.com/article.asp?a=top_pc&id=6856.)

Cease-and-desist orders have been entered against the Radian Lien Protection Policy product in several states, and others are actively researching the issue. Radian is involved in litigation in California, which has an extraterritorial insurance statute. So, for title insurers and for Radian, the outcome will be critical in its effect on Radian’s ability to sell the product anywhere. The Connecticut Department of Insurance rejected the product, twice, with a resounding denial, both on grounds that they were a monoline state and this was clearly title insurance, as well as stating “[i]t appears the premium cost for Connecticut consumers would increase under Radian’s program, not decrease.”

Radian is rumored to be encouraging Congress to investigate the need for title

insurance for VA and FHA foreclosed loans and to consider pre-emption of state insurance laws so they can sell their policies unencumbered. Since Senator Phil Gramm (R-TX) is no friend of title insurance or insurers, they may find a receptive ear.

Interestingly enough, one of their strategies has been to seek attorneys to sign “Attorney Opinion Letters” drafted by Radian Express, Inc., based on Radian’s abstract or title search, but printed on the attorney’s letterhead. Radian would provide the attorney with an indemnity, but would need “proof of [the attorney’s] malpractice insurance, as it is a requirement of Fannie Mae and Freddie Mac in order to provide this service.” And all this would be for a maximum fee to the attorney of \$50.00.

Meanwhile, other products are arising, being reviewed, and many disapproved by Departments of Insurance. ALTA is maintaining a “Mortgage Impairment Resource Center” web site at <http://www.ncdoi.com/Industry/LBAR/Bulletins/2002/02-B-4.pdf> on which many products, bulletins, and other materials are being posted. Representatives from all of the major title insurance underwriters are actively investigating and pursuing this issue. Commissioner of Insurance Jim Long issued Bulletin Number 02-B-03 requiring that “mortgage impairment products” be filed and regulated as title insurance. However many of the issuing companies continue to insist that they are not “mortgage impairment” and are not filing for reasons such as insistence that they must only file in their home state, that they are “surplus” lines coverages, or that they are simply endorsements to but an integral part of mortgage guaranty products.

For those of us busy with our day-to-day and unable or uninterested in becoming involved in the battle, ***all you have to do is stay alert and make a call to NCLTA or ALTA when you encounter situations indicating these products might be involved!*** When you review your financial information or talk with your sales representatives and customers, are you staying alert to ask about where your lender business is going? Are you assuming its to another title company? Or is it

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Key Legislative Issues

Notary Acknowledgments, thumbprints and more:

Senate Bill 1225 would require every notary public to maintain a journal, complete with the *right thumbprint* of the signer, itemizing every document and signature notarized, while increasing the fees to a whopping \$5.00 per acknowledgment. Specifically, Part 3 would require that “[a] notary public shall maintain in a sequential journal a record of all notarial acts performed” including “[t]he name, address, signature, and right thumbprint of each person whose signature is notarized” and “[a] statement establishing how the signer’s identity was confirmed, including, if applicable, the type of identification document submitted, with its serial number and date of issuance or expiration.”

A few quick questions that came to mind included:

1. Under 10A-3(8)a, what qualifies as a “physical description?”
2. Would the notary still require thumbprint and detailed identification (including serial number) for a family member or person known all their life?
3. What constitutes a “person unaffected by the document or transaction?” Should this not be more clearly defined, such as a party to the instrument as in current notary statutes? Or is this intended to be a broader prohibition?
4. Journals and thumbprints seem highly “regulatory” in an environment of deregulation of consumer protections.
5. What if the document does not have a name or description that is readily obvious? The notary is not authorized to read entire documents, only to acknowledge executions or take oaths.
6. Who will be the notary police? And, more importantly, who will pay for this oversight?
7. And what penalty if the acknowledgments are proper but the journal is incomplete?
8. How long would one have to maintain their journals?
9. How will this affect electronic recording?

For the nonbelievers: Yes, this is a real bill currently pending! It is being sponsored by the newly formed North Carolina Notary Association, adopted with a few changes from the version of the National Notary Association. The Secretary of State, Registers of Deeds, and Clerks of Superior Court are planning to request exemptions for their staffs. Several of us are writing or already have written letters to the appointed legislators sponsoring the bill, voicing our serious concerns, especially with Part 3 mentioned above. The bill, its status, and sponsors can be located on-line at: <http://www.ncga.state.nc.us/gascritps/BillLookUp/BillLookUp.pl?Session=2001&BillID=s1225>

HUD and the HomeBuyer’s Bill of Rights

Secretary of Housing and Urban Development Mel Martinez has announced his plan for “sweeping RESPA reform.” I do not think anyone (other than lenders and their investors) would argue with the need for reduction of paperwork. And everyone should agree that delays due solely to disorganization, lack of training, and incompetency are overwhelming and should be avoidable. But I guess we will all wait with bated breath to see the ultimate effect of the stated goal of “[r]emoving regulatory barriers to allow market forces and increased competition to promote greater choice for consumers by allowing guaranteed packages or ‘bundling’ of settlement services and mortgage loans.” Much of the existing industry structure may be substantially affected, including our requirements of attorney certifications and risk rates (rather than set rates). The News Release is on-line at: <http://www.hud.gov/news/release.cfm?content=pr02-069.cfm>

Privacy, Phase 2

We were fortunate in having Don Lampe’s assistance early in the drafting phase of the first legislative effort, resulting in an exemption of title insurers from having to give notice to all insureds of our privacy procedures. Section 58-39-28(a), Exception for title and mortgage guaranty insurance, provides

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that “[a] title insurance company shall give notice of its insurance information practices under G.S. 58-39-25 [notice at time of application] and G.S. 58-39-26 [annual notice] only at the time the final policy of title insurance is issued and is not subject to any annual notice requirement thereafter. “

Now Phase 2 is upon us, the Standards for Safeguarding Customer Information Model Regulations, the model version of which was adopted by the NAIC recently. The North Carolina version we have seen so far (again, thanks to Don Lampe) is substantially similar to the NAIC version, in effect, if not in form, and would provide as shown below. Please consult with your regulatory counsel and advise the NCLTA if you have any questions, objections, or suggestions, AS SOON AS POSSIBLE. The Department of Insurance is planning to present this Bill for adoption in this current Short Session.

“ARTICLE 39.

Consumer Information Privacy.

Insurance Information and Privacy Protection Act.

Part 1. Insurance Information and Privacy Protection Act.”

SECTION @. Article 39 of Chapter 58 of the General Statutes is amended throughout by substituting “This Part” for “This Article” and substituting “this Part” for “this Article” wherever they appear.

SECTION @. Article 39 of Chapter 58 of the General Statutes is amended by adding a new Part 2 to read:

“Part 2. Customer Information Safeguards

§ 58-39-125. Preamble;

(a) This Part establishes standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807.

- (b) Section 501(a) provides that it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers’ nonpublic personal information. Section 501(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards: (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.
- (c) Section 505(b)(2) requires state insurance regulatory authorities to implement the standards prescribed under Section 501(b) by regulation with respect to persons engaged in providing insurance.
- (d) Section 507 provides, among other things, that a state regulation may afford persons greater privacy protections than those provided by subtitle A of Title V of the Gramm-Leach-Bliley Act. This Part requires that the safeguards established pursuant to this Part shall apply to nonpublic personal information, including nonpublic personal financial information and nonpublic personal health information.

§ 58-39-130. Definitions.

As used in this Part:

- (1) ‘Consumer’ means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual’s legal representative.
- (2) ‘Customer’ means a consumer who has a customer relationship with a licensee.

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- (3) 'Customer information' means nonpublic personal financial information or nonpublic personal health information about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.
- (4) 'Customer information systems' means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.
- (5) 'Customer relationship' means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.
- (6) 'Health information' means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:
- The past, present or future physical, mental or behavioral health or condition of an individual;
 - The provision of health care to an individual; or
 - Payments for the provision of health care to an individual.
- (7) 'Licensee' means a licensed insurer, producer, or other person licensed or required to be licensed, authorized, or registered under this Chapter. 'Licensee' does not mean a purchasing group or an unauthorized surplus lines insurer.
- (8) 'Nonpublic personal financial information' means:
- Personally identifiable financial information; and
 - Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.
- information; publicly available information, except as included on a list described in sub-subdivision b of this subdivision; or any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.
- (9) 'Nonpublic personal health information' means health information:
- That identifies an individual who is the subject of the information; or
 - With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.
- (10) 'Personally identifiable financial information' means any information:
- A consumer provides to a licensee to obtain an insurance product or service from the licensee;
 - About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or
 - A licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.
- 'Personally identifiable financial information' does not include health information; a list of names and addresses of customers of an entity that is not a financial institution; or information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.
- (11) 'Service provider' means a person that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to the licensee.

'Nonpublic personal financial information' does not include health

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§ 58-39-135. Information security program.

Each licensee shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of customer information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

§ 58-39-140. Objectives of information security program.

A licensee's information security program shall be designed to:

- (1) Ensure the security and confidentiality of customer information;
- (2) Protect against any anticipated threats or hazards to the security or integrity of the information; and
- (3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

§ 58-39-145. Examples of development and implementation methods.

The actions and procedures described in G.S. 58-39-150 through G.S. 58-39-165 are examples of methods of implementation of the requirements of G.S. 58-39-135 and G.S. 58-39-140. These examples are non-exclusive illustrations of actions and procedures that licensees may follow to implement G.S. 58-39-135 and G.S. 58-39-140.

§ 58-39-150. Risk assessment.

The licensee:

- (1) Identifies reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems.
- (2) Assesses the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information.

- (3) Assesses the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.

§ 58-39-155. Risk management and control.

The licensee:

- (1) Designs its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;
- (2) Trains staff, as appropriate, to implement the licensee's information security program; and
- (3) Regularly tests or otherwise regularly monitors the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.

§ 58-39-160. Service provider arrangement oversight.

The licensee:

- (1) Exercises appropriate due diligence in selecting its service providers.
- (2) Requires its service providers to implement appropriate measures designed to meet the objectives of this Part, and, where indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied these obligations.

§ 58-39-165. Program adjustment.

The licensee monitors, evaluates and adjusts, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.

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§ 58-39-170. Violation.

A violation of G.S. 58-39-135, G.S. 58-39-140, or G.S. 58-135-175 is an unfair trade practice under Article 63 of this Chapter.

§ 58-39-175. Effective date.

Each licensee shall establish an information security program, including appropriate policies and systems pursuant to this Part by [insert date].

Deeds of Trust – Payoffs, Cancellations and Securing Future Obligations

Representatives of the Real Property Section (Chris Vaughn, Adam Foodman, and Ed Urban), the NC Bankers Association (Paul Stock, Ed Winslow, John Fleming, Jim Creekman, John Warren, and Steve Poe) and NCLTA (Nancy Ferguson) are working together to draft a bill for the 2003-2004 legislature. The primary components of the bill will address: (1) Obtaining reliable payoffs (especially in future advance, equity line, or line of credit situations), (2) Record cancellations of deeds of trust by closing attorneys or settlement agents (when a paid lender fails to do so or disappears), and (3) Clarification of the securing of future obligations under G.S. 45-67 *et seq.*

Decedents' Estates – Can a Fiduciary Convey Title to Real Estate?

Ed Urban is actively working with representatives of the NCBA Real Property Section and NCBA Estate Planning and Fiduciary Law Section on revisions to Chapter 28A applicable when a personal representative can or cannot sell real property without a court order (formerly House Bill 716). According to Ed, the Real Property Section Committee and Estate Planning and Fiduciary Law Section have agreed on a compromise revision of H716. The Administrative Office of the Courts has raised certain objections. It apparently feels that, even if the Will clearly

gives the Personal representative the power to sell without a court order, H716 should provide a procedure for the devisees to object. An extensive written reply has been sent to the AOC by Graham Holding on behalf of the Estate Planning and Fiduciary Law Section and Ed Urban as representative of the Real Property Section and NCLTA General Counsel. State Senator Dan Clodfelter, Graham Holding, and Ed Urban will meet Friday, July 12, to discuss why the AOC's fears and objections are unfounded.

Anti-Terrorist Regulations:

The USA Patriot Act of 2001 requires both anti-money laundering procedures as well as customer identification minimum standards be adopted and implemented by all financial institutions, including insurers. Phase 1 (67 CFR 8565 (February 25, 2002)) involves requirements of financial institutions to include a search of the "potential terrorists" lists for each closing they handle. So many of our companies took such actions in other states as adding these names to the "judgment" or "encumbrances" indices in title plants. In North Carolina, most of us must rely upon the attorneys certifying title to adequately identify their customers. The list of Specially Designated Nationals suspected of terrorist activities has been updated as late as July 3, 2002, and is on-line at <http://www.treas.gov/offices/enforcement/ofac>

Now Phase 2 will include regulations outlining necessary minimum standards for financial institutions regarding the identity of customers. These regulations should be effective on or before October 26, 2002. Most of our national regulatory offices are, again, busy studying and providing input on these standards and their implementation by all of our offices.

The NC Commission of Insurance has issued Bulletin 02-B-4 (web site: <http://www.ncdoi.com/Industry/LBAR/Bulletins/2002/02-B-4.pdf>) outlining relevant information in North Carolina.

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Key Regulatory Issues

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another product — an illegitimate and sub-standard product out to replace you? Be alert to:

1. Recognize *when* these products must be involved (typically, the title insurance business disappears suddenly),
2. Determine from your customer, if possible, exactly *which product* (company, product name) that lender is using as an “alternative” to title insurance,
3. Educate your lender customers, using resources available on the ALTA Resource Center page above, about how much less protection they are receiving and the risks if that product is determined illegal, and
4. Contact either ALTA or your NCLTA representative, for research with the Department(s) of Insurance, ALTA and others to find if the product really should be classified as title insurance and if it is being issued in violation of the title insurance enabling statutes.

Again, this will be a topic that will *directly impact your continued business sources!* And it is a key topic on the agenda at the Convention in August. So, if you have not signed up yet, please reconsider.

Special thanks again to Holly Alderman, Jay Hedgpath, Alton Russell, and Robert Bauchle for their continued assistance and participation on this issue.

FTC-DOJ vs. NC State Bar vs. NCBA Real Property Section

As everyone is now aware, the Federal Trade Commission and Department of Justice wrote to the North Carolina State Bar on December 14, 2001, “requesting” that the State Bar rescind Ethical Opinions 2001 FEO 4 and 2001 FEO 8, as well as that they issue a revised omnibus opinion that non-attorneys could do closings. Many arguments were raised: What is the FTC definition of a closing versus a signing? Where does the FTC see the consumer receiving advice and protection? What proof did the FTC have that this would create a “cheaper” scenario for the consumer, given the historical reduction in closing fees in NC and the data that NC was one of the least expensive states for closing costs? Many witnesses testified at the formal hearing before the Ad Hoc Committee. Much statistical and anecdotal material was presented. But the Ad Hoc Committee issued a recommendation complying with the FTC request and adding a proposed Authorized Practice Opinion that non-lawyers can oversee “closings.” The letters, memoranda, correspondence and proposed opinions are on-line at the Real Property Section web site, http://www.ncbar.org/legal_prof/sections/Rp/general/ftc_index.asp. The Proposed Opinions will be considered by the State Bar at their quarterly meeting the week of July 15-19, 2002, after which any opinions adopted will be published for the 3-month comment period, for review at the next quarterly meeting in October.

Legislative

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Attorney IRS Reporting

New regulations which probably will not take effect until 2004 would exempt attorneys handling closing transactions, solely in that capacity, from reporting requirements and increase the reporting threshold to \$600 on other matters. http://www.alta.org/govt/issues/02/alta_0528.htm

President's Message

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personal recognition of Joe Parker, our former President and former President of ALTA, for his efforts in contacting our Legislative Delegation in Washington, DC, recently.

Most importantly, EVERYONE SHOULD COME TO THE CONVENTION AUGUST 8-10, 2002, in Atlantic Beach. It's convenient, it's reasonably priced, it's an excellent place for a mini-vacation, and the topics and speakers are about as relevant in all of our business lives as they can possibly be given our current environment! OUR INDUSTRY, ESPECIALLY HERE IN NC, IS AT A CROSS-ROADS AND EVERYONE NEEDS TO PARTICIPATE IN OUR FUTURE!

In Memoriam – John H. Noblitt, 1948-2002

NCLTA President, 1987-88

NCLTA General Counsel, 1992-93

NCLTA Honorary Member, 2001-2002

Over the years I got the sense that I may have known a somewhat different John Noblitt that others in the title industry or among the real property bar. I did not know many of the things about him that appeared in his obituary, in Don Hudson's posthumous *Charlotte Observer* commentary, or that the minister related from the pulpit in his memorial service—that he was a good cook, wonderful storyteller, body surfer, and mimic. I did not realize he had attended Duke University as an undergraduate nor taught junior high school, and I had forgotten he went to Wake Forest law school. I was unaware of his love of music or that he was such a fan of Elvis or Proust.

What I did know is that he adored his wife, Heloise, and was proud as punch of their son, Ian. I knew he loved his parents very much because I was in his office minutes after he learned his mother had been diagnosed with liver cancer in 1987 and because he left the last NCLTA annual convention he attended in 1996 to visit his father who was suffering from Parkinson's and who died later that year.

From my perspective, John was a bit of an anomaly. He did not participate in the NCLTA golf or tennis tournaments. Instead, he preferred to pit himself against nature. He loved the beach and body surfing. He enjoyed walking in the woods, on the beach, and in his neighborhood. He rafted the Colorado River in the Grand Canyon and planned to do it again this summer with his family. When he was presiding at an NCLTA executive committee meeting once, peering out beneath the left sleeve of his blue suit jacket and white-sleeved shirt was a Native American bracelet. When he reached a difficult juncture in his career, he went to Nepal, and it would not have surprised me if had he told me he would like to have climbed Mt. Everest...maybe he did. Certainly he pit himself against his brain cancer...and, for a while, he was winning.

I don't know whether it was his Cajun-Scottish blood, but John's spirit was indomitable. He loved life so much. When I first learned he was ill, he told me that he always saw "the

glass half full" and was planning on a "long and happy life." When life handed him lemons, he made lemonade. And there were times when I was a witness to the lemons in his life. At the end of May when he went from using walkers to a wheelchair, he told me, "A wheelchair could be fun!" He was still courageous and resolute the week before he died, even though I now suspect, by then, he knew he was fighting a losing battle.

To me, John was something of a visionary. He always seemed three steps ahead and I had to run to catch up. He predicted things about the title industry that came true years later, and he saw in me things that I did not realize were there. His unassuming and laid-back manner belied the intelligence and drive beneath. He introduced me to Insurance Commissioner Long and spearheaded the writing of the North Carolina title agents' licensing exam. Together with Al Gardner, we raised the association out of debt and restructured NCLTA's financial policies regarding lobbyist expenditures, the Real Property Section convention sponsorships, and membership dues to safeguard the association's financial future. And after seeing the rapid succession of five executive directors in eight years manage NCLTA, he figured out how to ensure my longevity in that position by twice requiring a special services clause be entered into the management agreement between NCLTA and Olson Management Group. But he was a gracious Southern gentleman and would not willingly take credit for any of these achievements.



John H. Noblitt wearing one of his trademark "luau shirts", Wrightsville Beach, August 1987.

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Instead, John made his mark on people one at a time:

John Noblitt walked this way. There is never a good time to go, but from the gorges of the Natahala to the heights of Katmandu, with tales of the Ongaro Ongaro crater and the river at Agra, we can envision the many people touched by the endearing smile of one who has “seen the other side of the mountain” before his time came. We were among those blessed by his presence and we will always treasure his friendship.

—Woody Harrison & Family

For nearly 30 years John and I were friends: first as law school classmates; then as private real estate law practitioners in Winston-Salem; and, finally as fellow members of the title insurance industry beginning in 1988, the year John was President of the NCLTA. I will always remember and appreciate John’s unique style of discernment, levity, clever wit and playful sense of humor.

—Jay Hedgpeth

I never had the pleasure to work with John on regular or daily basis, however, I was around John enough to know he was likeable. He always greeted me with a warm and kind, somewhat sly smile. He always spoke. He made you feel liked. He was competitive but never gave the sense that work was the “be all and end all.” You had the feeling his life was well-balanced. He will be missed.

— Joe Ritter

I had the pleasure of serving with John on the NCLTA Executive Committee in the mid-1980s. He was dedicated to the title insurance industry. His contribution to our association and the industry were substantial and I will miss him as a fellow title man and a friend.

— Joe Parker

I had many fun and interesting conversations with John in our travels to and from the Executive Committee meetings when they were not in Charlotte (which was most of the time). But my most vivid memory of John was at the NCLTA Convention when I

was President and John was Vice-President. Anyway, it was held at Wrightsville Beach and back then the gentlemen dressed casually the first evening (that still meant open collar shirt and sport coat) and wore a suit and tie for the Banquet on the second night. John showed up in a loud, floral “luau” shirt the first evening and quietly lobbied the other attendees to join him the next night to kick off his “laid-back” administration (he was sworn in as President at that Convention). I can still remember the pictures from that meeting and the great time we all had wearing those outlandish shirts. It was, I think, John’s way of saying to the industry: “Don’t take yourselves too seriously; life, and especially conventions, should be fun!”

—Pat McNeely

They say adversity builds character. John faced a lot of adversity in his life, from watching both his parents progress through their respective illnesses, experiencing his own career crises, and finally, facing his own illnesses and treatments. I was blessed to play a role in his last inning, and during that short time, I learned something of his capacity for love, strength, and courage...and my own. I may have even been witness to his last struggle, because, in the end, I understand he went peacefully.

John and I both appreciated art. I have a card that I never got to send him. It said,

“Slowly, in the Potter’s skillful hands, our CLAY TAKES FORM. At times we’re PULLED and STRETCHED in ways that make us plead, ‘Aren’t you finished yet?’ But the Potter replies, ‘Be PATIENT. Yield to My touch. For I am making you a thing of BEAUTY in My sight.’”

*“We are the clay.
You are the Potter;
We are all
The work of Your hand” – Isaiah 64:8 (NIV)*

“When we’re going through times of trials, we don’t always know why, but we know that we are the work of His hands, a work that is always in progress. May you feel His love making you stronger as He molds you into His own precious work of art.”

—Penney De Pas, CAE
NCLTA Executive Director

Memorial donations may be made to Hopebuilders Nob Squad, Duke Brain Tumor Center, PO Box 3828, Durham, NC 27710; Hospice at Charlotte, 1420 E. 7th St., Charlotte, NC 28204; or Myers Park United Methodist Church in honor of parish nurse and earth angel Susan Mobley, 1020 Providence Rd., Charlotte, NC 28207.