



Carolina Update

NCLTA's Exclusive Report to its Members

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President's Message

Bryan Rosenberg, NCLTA President

Electronic Recording of Real Estate Documents



It has been almost four years since North Carolina, on the cutting edge of technology, was one of the first states to authorize the use of electronic signatures with the enactment of the North Caro-

lina Uniform Electronic Transactions Act (NCUETA).¹ This legislation, along with the federal Electronic Signatures in Global and National Commerce Act (E-Sign),² has offered real estate attorneys a simple and cost-saving method not only to improve the efficiency in real estate transactions, but bring added value and service to the consumer.

NCUETA and E-Sign go beyond ordinary e-commerce and apply to offers to purchase and contract, deeds, deeds of trusts, and title insurance contracts. More and more lenders are sending their closing instructions and documents to attorneys by e-mail. Title insurance companies have embraced the use of electronic signatures in their businesses. Now some companies allow, and even encourage, attorneys to submit their title opinions, bearing their electronic signatures, via the Internet. In turn, title companies deliver commitments and policies to attorneys and lenders by fax, e-mail attachment, and the Internet—all due to the authority in NCUETA and E-Sign.

Electronic recording also has the potential to alleviate one of the major headaches in completing a real estate closing: the cancellation of a satisfied deed of trust. Imagine lenders having the ability to, with a few clicks of a mouse, transmit a satisfaction directly to the register of deeds, *at the same time* it receives the certified funds paying the debt in full. What a great system that would be! The attorney does not need to chase down the cancellation, the borrower and lender receive their final title policies more quickly, the register of deeds has less paper to process and is more up to date with its electronic indexing system, and it would make the title searcher's job easier. The overall savings of time and money that could be realized are huge.

So, you ask, if electronic recording is so great, why is no one doing it?

The status of real estate documents with electronic signatures in North Carolina is defined by NCUETA and E-Sign. As between the parties, the documents already are enforceable and legally binding. In fact, NCUETA specifically states that a record, a signature or a contract "may not be denied legal effect or enforceability solely because it is in electronic form." Additionally, if a law requires a record to be in writing or requires a signature "an electronic record satisfies the law provided it complies with

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HUD goes back to the “drawing board” on RESPA

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Then Acting Secretary Alphonso Jackson of the Housing and Urban Development Department announced on March 22 during a media conference call that HUD was withdrawing the reform rule to the Real Estate Settlement Procedures Act (RESPA). Jackson did this through a letter to the Office of Management and Budget (OMB) asking that its final RESPA Reform Rule be returned to HUD. The letter (www.alta.org/govt/issues/04/jacksonletter.pdf) was dated the same day as the media conference and indicated that HUD felt it “prudent to reexamine” its proposed RESPA rule revisions before it is made final.” HUD’s plan at this point is to review comments and to confer with Congress and various industry and consumer groups. However, no specific timetable was given for refining and re-proposing another rule for comment.

In commenting on the news, ALTA’s forecast was that, while Jackson holds open the possibility that the process of RESPA reform could begin again, it does not look likely in

the short run. ALTA recognized Senator Wayne Allard of CO and his staff for taking “a strong leadership role in opposing the confirmation of Alphonso Jackson as HUD Secretary over the manner in which HUD had processed this rulemaking.” Additional credit was extended to Representatives Judy Biggert (R-IL) and Ruben Hinojosa (D-IL) for their “Dear Colleague” letter which garnered the support of over half the U.S. House of Representatives. ALTA also commended its long-time supporter, Chairman Don Manzullo (R-IL), “for his ardent advocacy of the potential effects on small businesses of this rule” and expected to remain vigilant for any re-proposal or other signs of movement in this area.

Subsequently, Mr. Jackson was confirmed as HUD Director. Even Sen. Wayne Allard told committee members “I am happy to announce I am able to support Mr. Jackson’s nomination.”

Automated HUD-1 now available from Digital Docs

In other news related to HUD, Digital Docs, Inc., now offers the first automated HUD-1 that allows lenders to control the closing process. “Because the approved HUD-1 drives the creation of the final loan documents, inaccuracies between the final HUD-1 and loan documents are virtually eliminated,” claims the Windows®-based technology that links mortgage data to its document engine and distribution channels. The software features built in high-cost and predatory calculations or the lender’s own calculation engine to provide a high level of confidence in the data’s accuracy and integrity. The digital HUD-1 includes an import of an insured closing letter directly from the underwriter, performs OFAC and social security checks, and comes with optional audit modules. The technology also provides the ability for the lender to disburse through the closing agent using Digital Checks.

MERS® launches eRegistry for eNotes

On April 26, MERS announced the launch of the MERS® eRegistry, a system of record that identifies the owner (Controller) and custodian (Location) for registered eNotes, providing greater liquidity, transferability and security for lenders. "A major component of the eMortgage puzzle is now available and ready for use, ahead of the market," said R.K. Arnold, president and CEO, MERS. Work began on the eRegistry in March 2003 and EDS was endorsed as the technological support component by MERS in August 2003. "Although it will take many years for the industry to fully adopt this system, it will become widely used because the marketplace is demanding a move towards less paper in the home buying process," added Arnold.

The MERS eRegistry is the first significant step towards the future of an all-electronic mortgage. It was created as a response by the mortgage industry to satisfy certain safe harbor requirements provided under the Uniform Electronic Transactions Act (UETA) and the Electronic Signatures in Global and National Commerce Act (E-SIGN). "The MERS eRegistry is designed to reduce risk and generate more profits for lenders because the Notes registered on it will be in electronic format," said Carson Mullen, executive vice president, Customer Division, MERS. "It shortens the timeframe between the closing and the securitization of the loan, enabling the Note to move instantly, creating faster funding."

ALTA Board adopts five more forms

On January 17, 2004, ALTA adopted three new forms:

- ALTA Endorsement Form 17.1
- Short Form Commitment
- Standard ALTA Incorporation Provision for all ALTA Endorsements

On April 19, the ALTA Board of Governors adopted the proposed Commercial Endorsement Forms 20 (First Loss) and 21 (Creditors Rights).

- ALTA Endorsement Form 20 (First Loss-Multiple Parcel Transactions)
- ALTA Endorsement Form 21 (Creditors' Rights)

These two forms, along with the existing ALTA forms, are expected to advance a goal of both the industry and commercial lenders and developers: to have greater standardization in commercial transactions. It is also expected that these forms, with ALTA support, will meet with greater market acceptance and, at the same time, provide more consistency in legal interpretation. They will also serve to limit title insurer liability while providing real coverage in these otherwise amorphous areas for the insureds. To view a list of all of ALTA's forms, visit: www.alta.org/store/forms/basicpolicy.htm.

All these forms have been submitted by NCLTA to the North Carolina Department of Insurance for approval.

Convention Calendar

NCLTA 2004 Annual Convention

www.nclta.org/convention.html

September 16-18, 2004

The Boar's Head Inn

Charlottesville, VA

www.boarshheadinn.com

ALTA 2004 Annual Convention

www.alta.org/educ/cnvntn/index.htm

October 6-9, 2004

The Westin Copley Place

Boston, MA

NCLTA 2005 Annual Convention

September 15-17, 2005

The Grove Park Inn

Asheville, NC

www.groveparkinn.com

NCLTA 2006 Annual Convention

September 14-16, 2006

Wild Dunes Resort

Isle of Palms, SC

www.wilddunes.com

Convention moves to September in Charlottesville



The 2004 annual convention for the NC Land Title Association will venture into the foothills of the Blue Ridge Mountains of Virginia from September 16 to 18 to try a new location *and* time of the year. Faced with an academic calendar continually creeping into August, for the next few years NCLTA will hold its annual convention in mid-September rather than in August, with Charlottesville, VA, as the location for this year's confab.



Above: Inn patio, courtesy of Boar's Head Inn.

Top: Ballroom, courtesy of Boar's Head Inn.

Lower right: Hunt Club, courtesy of Boar's Head Inn.

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Top: Old Mill Room, courtesy of Boar's Head Inn.

Middle: Birdwood Golf Course, hole 11, courtesy of Boar's Head Inn.

Bottom: Monticello, photo by Tanya Henderson.

CLE Program

In addition to the standard convention subjects and updates from the American Land Title Association, the NCBA Real Property Section, and Pat Hetrick's Case Law Review, Convention Chair Gary Whaley has planned a 6-hour CLE program focusing on the basic realities of today's title industry—underwriting, claims, and broad-based legislative initiatives. He has tapped Paul Hammann of First American Title Insurance Co. and ALTA Forms Committee Chair to provide an in-depth discussion of the surfeit of new forms being issued and revised. Chicago Title's Claims Counsel, Nancy Short Ferguson, will report on the status of the "Uniform Mortgage Satisfaction Act" being promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and Investors Title's Claims Counsel Stephen Brown will provide an overview of "Claims Stories." A panel consisting of the state's title company counsels will provide their viewpoints on "Underwriting Issues."

Location

An idyllic country resort set in the middle of a bustling, modern, university town, The Boar's Head Inn seems at first to be anachronistic. However, the moment you set foot in this 171-room inn set on a 573-acre estate in Charlottesville, adjacent to the University of Virginia, you feel transported back to the early 18th century but with all the comforts and conveniences of the 21st century. Set back from the commotion of the street, you feel the tensions of the busy world melt away as you wind your way through the tree-lined drive.

An old-world hospitality and the serenity of a calmer pace envelope you as you enter the intimate, low-ceiling, wood-paneled lobby.

Rooms either have a fireplace or a balcony or terrace overlooking the rolling countryside. In addition to cable television, each room includes internet access, custom-stocked mini-refrigerator, coffee maker, fluffy pillows, sumptuous bathrobes, and other amenities.

The Inn's History

Source: www.boarsheadinn.com

Registered as one of the Historic Hotels of America by the National Trust for Historic Preservation, the Boar's Head Inn is situated on the site of Terrell's Ordinary, a modest inn which offered shelter to guests traveling west in the 1730s. In the early 1960s, some local businessmen decided to build the "quintessential Virginia inn" on the property. One of the group, John Rogan, learned there were remnants of an old gristmill nearby, so he carefully numbered, dismantled, and reconstructed every piece at the present site of the Inn.



Convention moves to September in Charlottesville

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Dating from 1834, the mill had been built on the banks of the Hardware River and enjoyed great prosperity until Generals Grant and Custer marched through Charlottesville and ordered it burned. Local legend credits heavy rains and the mill's sound construction for preventing its total destruction. After the war, a retired Confederate captain purchased the mill, operating it successfully until the end of the 19th century. The Inn now prominently features the original fieldstones, heartwood pine beams, planking, and massive grist stones. Today, the Old Mill Room (photo at right) is graced with the time-worn timbers of the original mill. The millstones and fountain on the patio also remind visitors of the Inn's links to the past. Vintage antiques, many dating back several centuries, have been acquired over the years to grace the public areas.

Modern Amenities

Back in the 18th and 19th centuries, men traveled on horseback or in carriages over rutted roads many days from the coast to take refuge at a wayside inn in Charlottesville where one would sleep on a straw-filled mattress in a room filled with other strangers. Today, The Boar's Head Inn offers the luxury of:

- Three restaurants, including the highly acclaimed, four-diamond Old Mill Room
- Championship Birdwood Golf Course, among the top 10 collegiate courses in the country
- A full-service Sports Club, featuring 14 outdoor tennis courts, 6 indoor tennis courts, 4 outdoor swimming pools and a state-of-the-art fitness center
- Luxurious Boar's Head Spa
- Two Pro Shops
- The Inn Store, offering luxury and one-of-a-kind gifts

The Charlottesville/Albemarle County Area

Source: www.charlottesvilletourism.org

Activities in this historically and culturally rich area of Virginia abound. It boasts five

historical gems: Thomas Jefferson's home, Monticello; the grounds of the University of Virginia with many buildings designed by Jefferson; James Monroe's restored home of Ash Lawn-Highland; the 18th and 19th century buildings of historic, downtown Court Square; and Michie Tavern, ca. 1784. (As of last fall, restoration was begun on Montpelier—the former 2,750-acre estate of James and Dolley Madison and the duPont family, but will be open for guided and “hard-hat” tours.)

However, attractions of interest do not stop here. Beautiful mountain scenery, splendid golf courses, a plethora of unique stores and shops, rivers, lakes, parks, and distinguished local wineries provide something to do for everyone. Would you prefer a hot air balloon ride aloft, an afternoon trail ride, a classic sports car drive through mountainous back roads, or a tailgate party at the Virginia-Akron football game?

Birthplace of American Wine

Source: www.monticellowinetrail.org

More than 20 vintners are located in the Monticello Viticultural Area, offering tours, workshops, and special events, including Afton Mountain Vineyards, Barboursville Vineyards, Cardinal Point Vineyard and Winery, First Colony Winery, Jefferson Vineyards, King Family Vineyards, Michael Shaps Wines, Oakencroft Vineyard and Winery, Veritas Winery, and White Hall Vineyards.

Plan now to attend the 2004 NCLTA annual convention for a unique experience. Registration materials will be available in mid-June on www.nclta.org/convention.html.



February Executive Committee meeting

Among the items discussed during the February 11, 2004, meeting of the NCLTA Executive Committee were the 2003 year-end independent financial review; plans for the upcoming convention scheduled for September 16-18 at The Boar's Head Inn in Charlottesville, VA; and forms revisions being considered by the NCBA Real Property Section Forms Committee. The Executive Committee also received reports from Sarah Friede about the NC Joint Land Records Task Force and approved two new members.

President Bryan Rosenberg informed the Executive Committee that he had signed a one-year agreement to retain Anne Winner as the association's lobbyist through the 2004

Short Session of the Legislature and that he had nominated three people to Secretary of State Elaine Marshall's office to represent the title industry on that office's reconstituted Land Records Advisory Committee.

The Executive Committee nominated Sarah Friede by acclamation to the Real Property Section Council to replace Chris Burti when his term ends in May. It was also decided that a strategic planning session for the association would be held on Thursday, May 20, from 1:00 to 3:00 pm to update the plan developed three years ago. The Executive Committee would meet at its usual time (immediately prior to the strategic planning session).

Welcome New Members!

During its February 11, 2004, meeting, the Executive Committee of the North Carolina Land Title Association approved the following new members:

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NC Department of Insurance renews Advisory Organization License

The North Carolina Department of Insurance has again renewed the Advisory Organization License of the NC Land Title Association for the purpose of NCLTA filing ALTA-approved forms on behalf of its title company members for the period July 1, 2004, through June 30, 2005.

By filing the ALTA forms for title insurance underwriters in the state, NCLTA saves both the individual title companies and the insurance department considerable duplication of effort.

When a form is adopted by ALTA, NCLTA files the form with the insurance department for all its members with one application. Title company members of NCLTA who wish to use the generic ALTA form may use it without any further filing with the NC Department of Insurance. In addition, because NCLTA is only filing in North Carolina, it is not required to answer questions about form filings in other states, whereas individual title companies must research and report that information. In turn, the insurance department staff need review only one form filing instead of multiple filings of the same (or slightly varied) form(s).

President's Message

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the provisions of [NCUETA].” Although to date, there has been no litigation in North Carolina as to any provision of the Act, the outcome of any dispute as to enforceability should fall in line with the plain and unambiguous language of the statute.

Although documents may be signed electronically, the acceptance and recording of them still have major impediments. While many UCC filings are done electronically, only a few recorders have the ability to accept electronically submitted documents and, as far as I am aware, they are only cancellation documents from out of state lenders for paid deeds of trust. Although I disagree with the premise that our notary statutes conflict with NCUETA and, therefore, I disagree with the proposition that a North Carolina Notary Public is not permitted to notarize documents electronic documents. Another problem is the lack of a well-developed structure by which electronic documents are received, accepted, and indexed. This problem remains a big hurdle to implementation of a good workable system.

North Carolina is not alone in its struggle to meet the learning curve required in moving toward a more efficient and technologically advanced system to manage documents and promote good business practices. All states are faced with similar challenges. We have seen only limited use of electronic recordings throughout the country since the passage of E-Sign in 2000. Even though 44 states have adopted UETA, or some form of it, very few have undertaken the task of creating a system. Phoenix, Arizona, and Broward County, Florida, are two examples where recorders have tried to overcome the statutory problems and begin an electronic recording program. Additionally, national organizations such as the Property Records Industry Association (PRIA) and the Mortgage Industry Standards Maintenance Organization (MISMO) have been created to establish criterion to facilitate the implementation of successful programs, especially as to basic standards such as vocabulary and definition of terms.³

There is a national solution on the horizon. It is in the form of an act being drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) entitled the Uniform Real Property Electronic Recordation Act (URPERA).⁴ It is currently in its fifth draft and may become final as early as August of this year. This Act was specifically drafted for the purpose of authorizing the receipt, recordation, and retrieval of real property documents in electronic form.

This is a timely introduction not only because the act is needed to authorize and standardize the way in which we will record electronically, but also because our state legislators are anxious to enact statutes to facilitate recording and to keep their state commercially competitive. Senator Phil Berger, joined by Senator Tony Rand as a primary sponsor, recently introduced a bill to consider electronic recording of documents. Senator Berger invited me and many other stakeholders to meet with him and to consider the issues involved in electronic recordation of real estate documents. Upon hearing the issues, our concerns and the status of URPERA, Senator Berger suggests that we take the time between the Short Session and the 2005 Regular Session to look into what is necessary to get North Carolina ready to consider URPERA upon its adoption. This course of action would put our state in line with the national trends and allow sufficient time for those interested to let their thoughts be known and considered.

To stay an integral part of the closing process we must be advocates for the real estate consumer, for ourselves, and for the system. We, as attorneys and as voters, need to support and participate in the legislative process as we progress in this area. I encourage each of you to consider how an electronic recording system could contribute to your businesses and better serve your clients. Make your opinions and ideas known. We are a community of professionals with the privilege and responsibility to take this opportunity to help shape the future of our businesses. Rare is the opportunity to contribute to a change that will better the system for all of its participants.

¹ N.C.G.S § 66-311, *et seq.*

² 15 U.S.C. § 7001, *et seq.*

³ Information on the Property Records Industry Association (PRIA) can be found at www.pria.us and on the Mortgage Industry Standards Maintenance Organization (MISMO) at www.mismo.org.

⁴ The current status of the Uniform Real Property Electronic Recordation Act may be found on the NCCUSL's website at www.nccusl.org.

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 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 July 31, 2004.** Please submit your nominations to the NCLTA Nominations Committee, c/o NCLTA, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607-5151; fax (919) 787-4916; email: pdepas@olsonmgmt.com; phone (919) 861-5584.

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: _____