



Carolina Update

NCLTA's Exclusive Report to its Members

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President's Message

Sarah M. Friede



Welcome to the new administrative year of NCLTA! For those of you whom I saw recently at the Grove Park Inn, I hope you had as much fun and learned as much as I did, and I look forward to seeing you again next year. Our speakers at the annual meeting were the best of the best, the weather was perfect, and everyone seemed to have a great time and enjoy the camaraderie. The weekend was—to use Rande Yeager's words—"liver pudding." For those of you who did not attend the meeting, I'll tell you that you really missed out on a great weekend (and you need to ask someone who went to explain that liver pudding comment).

Now that we've had our fun, we're already deep into the hard work of trying to protect and preserve our industry and maintain the efficient, professional, and inexpensive method of closing North Carolina consumers enjoy. The Executive Committee started its term with a leadership training meeting, during which we discussed the future of NCLTA and where we are headed as an organization. I'd like to extend a special thank you to Alton Russell for presenting us with such a thorough picture of the evolution of title insurance in North Carolina and how we've come to be where we are now. Without understanding our past, we cannot guide the future.

The leadership meeting we held was close on the heels of my trip to the ALTA annual meeting in New York City, the highlight of which was a speech by former New York Mayor Rudy Giuliani. Giuliani's topic was "The Characteristics of a Great Leader." Among other qualities, according to Giuliani, a leader must possess a sense of optimism, have a set of guiding principles by which to lead, and must not try to do things alone but must work with a team. To quote him, "No one wants to hear a leader who says, 'Things are bad, very bad, and they're only going to get worse. Now follow me...'" I agree with him. There are certainly plenty of reasons we could find to point to how things are changing in our industry and in North Carolina, reasons we could find to say that soon our way of doing business will be history, and sigh with resignation. To some, the writing is on the wall. I hope, however, that such is not the case. I may be an optimist, but I believe that if we work together we will be able to preserve the approved-attorney system for years to come. It has thrived all these years because it is the best system in the country.

That point leads me to the next characteristic Giuliani mentioned, and that is to have a set of guiding principals by which to lead. Within any organization, big or small, there will always be differing opinions about how to accomplish goals and even what goals to have; the title insurance industry is certainly no different. The Executive Committee has discussed on many occasions how to

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New Executive Committee takes office

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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2005-06 NCLTA Officers (l. to r.): Attorney Section Representative Ned Manning, General Counsel Hunter Meacham, Immediate Past President Gary Whaley, President Sarah Friede, Secretary Candice Williams, and Vice President Jon Parce. Treasurer Jeff Hrdlicka is not pictured.

During the annual business meeting of the North Carolina Land Title Association, the title company members in attendance elected the following slate of officers for the 2005-2006 term:

President – Sarah M. Friede, Statewide Title, Inc.,
Wilmington, NC

Vice President – Jonathan Parce, Stewart Title Guaranty Co., Asheville, NC

Treasurer – Jeffrey I. Hrdlicka, Chicago Title Insurance Co., Greensboro, NC

Secretary – Candice E. Williams, The Title Company of North Carolina, Charlotte, NC

The Attorney Section members of the Association elected William E. Manning, Jr., of White and Allen, P.A., Kinston, to serve as their representative on the Executive Committee. L. Hunter Meacham, Jr., LandAmerica Financial Group, Charlotte, was appointed as General Counsel to the organization.

Gary M. Whaley of Investors Title Insurance Co., Chapel Hill, NC, will continue to serve on the Executive Committee as Immediate Past President.



Incoming President Sarah Friede (r.) presents a plaque of appreciation to outgoing President Gary Whaley

At Press Time:

Immediately prior to its first Executive Committee meeting of its administrative year, NCLTA's recently elected Vice President, Jon Parce, resigned from his position with NCLTA due to a career change. In accepting his resignation with regret, and in accordance with the Bylaws, the Executive Committee voted to move Jeff Hrdlicka of Chicago Title Insurance Co. into the position of Vice President and elected Kim Rosenberg of United General Title Insurance Co. as Treasurer. The other officers remain in their positions as elected during the annual meeting.

Mortgage Satisfaction Act became effective October 1

Nancy Short Ferguson, Vice President and Senior State Counsel, Chicago Title Insurance Co.

As most are aware, the North Carolina version of the NCCUSL Uniform [Residential] Mortgage Satisfaction Act has been enacted. (N.B. The North Carolina act applies to commercial and residential payoffs.) Many CLE presentations, reviews of drafts and newsletter articles have already outlined the Act in detail, so the list below only highlights the key requirements and provisions in the final version of the Act:

- Mandatory reliable written payoff, specific to the deed of trust and property;
- Simplified satisfaction forms for trustee, secured party and satisfaction agent (below) satisfactions;
- Broader penalties and costs to the lender for failure to comply;
- “Self-help” satisfaction by satisfaction agent (licensed NC attorneys who undertake this representation) upon notice to the non-complying lender, which process can be used to obtain record satisfactions of pre-Act liens still of record but paid;
- Update, clarification and streamlining of existing N.C.G.S. 45-37 (methods of satisfaction) and related statutes, which have been piecemeal and sometimes inconsistently amended over the years;
- Amendments to N.C.G.S. 47-14 to (1) remove both the “due form” notary certification review by registers on all documents being recorded (including satisfactions), clarification of the requirement to re-record instruments (hopefully, addressing the ambiguity between simply re-recording and minor corrections recordings under N.C.G.S. 47-36.1); and
- Amendments to N.C.G.S. 161-14.1, expanding the non-exclusive list of subsequent instruments which must

be cross-indexed (including assignments of deeds of trust, satisfactions, among others) and that these instruments must be indexed in the names of the parties to the subsequent instrument, the names of parties the subsequent instrument indicates as parties to the original instrument, and must include a cross-index reference to the book and page of the prior instrument as shown in the first two pages of the subsequent instrument.

Conclusion and References

As always, an overview article such as this is no substitute for reading the actual act provisions or the views of others who will be administering its provisions. So, for further information, attorneys should consult and carefully review:

- **The NC Mortgage Satisfaction Act** (with new recording/indexing requirements) can be accessed online at: www.ncga.state.nc.us/Sessions/2005/Bills/Senate/HTML/S734v4.html
- **The new Notary Public Act** (including e-recording provisions) can be accessed online at: www.ncga.state.nc.us/Sessions/2005/Bills/Senate/HTML/S671v6.html
- **The NCCUSL Uniform Residential Mortgage Satisfaction Act with Official Comments:** www.law.upenn.edu/bll/ulc/umsa/2004finalact.htm
- **Land Records Bulletin**, Number 31, September 2005, by Charles Szypszak, editor, discussing these changes in detail from the perspective of the Registers of Deeds, can be ordered online from the UNC School of Government at: php.unc.edu/sogcart/singlebook.php?id=901

Welcome New Members!

Underwriter

The following Underwriter member was approved during a conference call meeting of the Executive Committee on August 17, 2005:

United General Title Insurance Co. (U)

***Bryan D. Rosenberg**

Kim Rosenberg

4601 Six Forks Rd., Suite 500 (temporary)

Raleigh, NC 27609

Phone (919) 510-8147 • Fax (919) 510-8146

Email: brosenberg@ugtic.com

krosenberg@ugtic.com

Attorneys

The following Attorneys were approved for membership during the September 15, 2005, Executive Committee meeting:

Amy R. Edge

PO Box 531

Oxford, NC 27565

Granville

Phone: (919) 690-1663

Email: aedge@gloryroad.net

James L. Gale

Smith Moore LLP

2800 Two Hannover Square

Raleigh, NC 27601

Wake

Phone: (919) 755-8763 • Fax: (919) 838-3111

Email: jim.gale@smithmoorelaw.com

Web site: www.smithmoorelaw.com

Legislature ends 2005 Long Session

For a complete compendium of laws passed during the 2005 session, please refer to www.ncleg.net.

Quite a few bills of interest to the title industry made their way through the legislative process in 2005:

- NCGS 45-36 Mortgage Satisfaction Law (S734)
- NCGS 32A Enforcement of Power of Attorneys (H510)
- NCGS 36C NC Uniform Trust Code (S679)
- NCGS 47C and 47F PCA/Condo Amendments (S666)
- NCGS 39-6.6, NCGS 47-18(a), NCGS 47-20(a) Subordination Agreement/Registration (S667)
- NCGS 44A NC Lien Law Amendment (S887)
- NCGS 47-16 Electronic Recording/Notary Act (S671)
- NCGS10-B Notary Act (replaces 10A) (S934)

For more in-depth analysis of these new or amended statutes, please see the Summer 2005 issue of *Carolina Update* at www.nclta.org/cu/2005/sumcu.pdf or Chris Burti's "Legislative Update" convention manuscript available from NCLTA headquarters (*order form on page 9*).

ALTA/ACSM Standards revised

Effective January 1, 2006, the National Society of Professional Surveyors (NSPS) and the American Land Title Association (ALTA) have adopted newly revised general ALTA/ACSM standards for surveys (www.alta.org/industry/ALTA2005_Standards.pdf). NSPS is a member association of the American College of Surveying and Mapping and responsible for the standards from the surveying side. Last revised in 1999, both groups again worked together to develop revisions to the standards over the past two years based on comments, concerns, and questions from surveyors and title people.

The most significant change is a further revision in the accuracy portion of the Survey Standards. These standards have been substantially revised to eliminate the so-called "Urban" survey standards in favor of a revised "Positional Accuracy" standard, which has meaning within the engineering world of surveyors. Other smaller revisions are also included.

Around the State

There have been a lot of changes at the offices of our membership in the past several months.

Attorneys Title Insurance Agency, headquartered in Raleigh, celebrated its 25th anniversary on Saturday, August 13, at the City Club De Rosset in Wilmington, NC. The Agency's Greensboro office, headed by *F. Stephen Rogers*, has moved to 125 S. Elm Street, Suite 212, Greensboro, NC 27401. The post office and other contact information remains the same.



Attorney Title Insurance Agency CEO Chuck Davis cuts the cake celebrating his agency's 25th anniversary.



W. Mark Griffith has joined the Raleigh office of **Chicago Title Insurance Company** as State Underwriting Counsel. Previously, he was in private practice as a business transactions lawyer with the Charlotte

office of Poyner & Spruill LLP. Chicago Title has closed its Concord branch office and opened one in Southport at 4705 Southport Supply Road, SE, Suite 305, Southport, NC 28461; PO Box 11189, Southport, NC 28461; Phone: (910) 454-1004; Fax: (910) 454-1003 where *Jennifer Hall* is manager, jennifer.hall@ctt.com.



Kenneth Stone has been named state manager of **Fidelity National Title Insurance** and has moved to the main office in Raleigh. *Shannon Haire* has been appointed State Marketing Director in Raleigh. *Sara Boshart* has also moved to the Raleigh office from the Asheville office. *Lisa McSweeney* has moved from the Pinehurst office to the Greensboro office. *Kristin Harmon Lang* has joined the Charlotte office, and *Rachel Efird* has joined the Raleigh office.

Volunteers needed

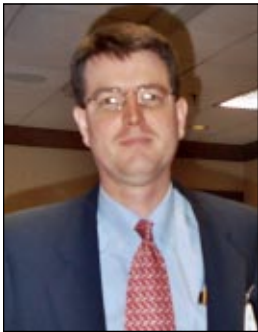
NCLTA is seeking members to volunteer for various areas of the association's work:

- Monitoring P&C filings with the NC Department of Insurance to alert NCLTA to any mortgage impairment or other types of insurance which may be disguised title insurance substitutes;
- Monitoring legislative bills to alert NCLTA to any non-title or non-real estate related language that may impact title insurance or real estate law (e.g., the Medicaid lien in the Appropriations bill this session);
- Development of educational offerings for non-attorney staff members at title companies.

Please contact exec@nclta.org to volunteer or to get more information.

Convention wrap up

Over 90 title company representatives, real property attorneys, and guests attended the 2005 annual convention at the Grove Park Inn in Asheville, September 15-17, despite Hurricane Ophelia's attempts to discourage us. Luckily, the weather in the mountains was not affected by what was happening at the coast, so a good time was had by all.



**Christopher Vaughn,
Real Property Section
Council Chair**

**Speakers Margaret
Burnham (l.) and
Patrick Hetrick trade
barbs during a break.**



A record 60 people attended the Friday morning education sessions. First on tap was an update from Real Property Section Council Chair Christopher Vaughn. After generally explaining the structure of the NC Bar Association, Real Property Section, and its governing Council, Vaughn briefly reviewed several pieces of legislation (Mortgage Satisfaction Act-see related article on page 3, new Notary Act, and technical amendments to the Medicaid Lien Law) and the Consumer Protection focus of the Council. They are currently seeking a replacement for Consumer Protection Attorney Ruth Kean who had resigned and using the opportunity to refine the role of the attorney in the closing process to increase efficiency, effectiveness, and professionalism of the work product in light of the 2000 Ethics Opinion.

During his annual case law review, Professor Pat Hetrick reviewed the "Hierarchy of Preferences in North Carolina" regarding the courts view of restrictions and conditions placed on estates in land, noting

that "Precise and clear drafting will always be honored by the courts as long as public policy is not offended. Weak, sloppy, inconsistent and imprecise drafting is what causes problems." Hetrick suggested that the state's Marketable Title Act may need to be amended or repealed due to unclear language and general references. He bemoaned the dearth of joint tenancy jurisprudence in the state caused by G.S. 41-2, calling it "duct tape drafting." He also covered life estates, attorney-in-fact, *lis pendens*, mechanics and laborers liens, legal problems in new home construction, rights of ownership, and very recent amendments to the Planned Community Act.

Due to higher gasoline prices and the impending arrival of Hurricane Ophelia on the coast, speaker Bill Bradbury of the NC Department of Insurance was ordered to stay in New Bern by the Governor and Insurance Commissioner. At the last minute, Chris Burti was substituted and presented a Power Point summary of state legislation. (See related article on page 4.)

Old Republic Title Insurance Company's President and CEO, Rande Yeager, presented the update on the American Land Title Association. Having spent his boyhood summers in a town which is "now at the bottom of Lake Norman," Yeager was pleased to be back in North Carolina. He reviewed ALTA's strong stand against Radian's mortgage impairment product and its vigilance with regard to similar products offered by casualty



**ALTA speaker Rande Yeager
explains the difference
between "liver pudding"
and "liver mush."**

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Convention wrap up

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A crowd of nearly 80 convention attendees mingle during cocktails preceding the banquet on Friday evening.

Below Left: Whit Page (l.) and Jarrett Clifford, along with Steve Jones (not pictured) won first place in the golf tournament.



Second-place golf tournament winners (l. to r.): Gary Chadwick, Linda and Alton Russell, and Rande Yeager

insurance companies. Yeager briefly reviewed the status of the states' inquiries into captive reinsurance companies and affiliated business arrangements. He explained that ALTA has always opposed former HUD Secretary Martinez's version of RESPA reform and was now actively participating in Secretary Alphonse Jackson's series of round-table discussions. Other areas of interest and vigilance to ALTA are GSE Reform (Freddie Mac and Fannie Mae do not require title insurance, only "evidence of title"), business checking and Regulation Q, the SMART Act which is an attempt at the federalization of insurance, and bankruptcy reform. ALTA was seeking a replacement for Ann vom Eigen, its long-time regulatory counsel, and had just filled the Membership Director position. Yeager announced that certified title agent tests are now online, that the "Title Triumph" game was revised, and that the annual convention would take place in New York on October 5-8.

Despite a heavy, but short, rainstorm at noon on Friday, the golfers were able to play a full round of golf in a very close tournament. Newcomers Whit Page and Jarrett Clifford of Chapel Hill Title and Abstract, along with Steve Jones of The Title Company of NC in Asheville, won first prize, whereas second place winners were Alton and Linda Russell and Gary Chadwick of The Title Company of NC and Rande Yeager of Old Republic.

On Saturday morning, Attorney Margaret Shea Burnham presented compelling arguments on the use of binding agreements and contracts versus letters of agreement, letters of intent, agreements to agree, paper writings, and letters of interest. She concluded with drafting tips on making documents binding or non-binding.

Both the Claims and Underwriting Panels reviewed a series of questions and approaches to each of the issues. The Claims Panel, consisting of Attorneys Rob McNeil,

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Convention wrap up

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Jim Pendergrass, and Alan Powell, and moderated by Jon Parce, included discussions on the Quiet Title Act, the new Notary Act, insuring over judgments with no notice provision, subrogation, estoppel, proving which loan document an attorney requests for payoff, the Equity Line statute and Future Advances statute, land partitions, and law suits brought in other counties.

The Underwriting Panel, consisting of Jane Barkley, Steve Jones, Al Gardner, and Hunter Meacham, moderated by Sarah Friede, discussed issues including a gift

deed, multiple use developments (including a boat slip), incapacitation of a soldier with a power of attorney, connection to a septic tank easement, road improvement with ditches, and domestic law versus real estate law.

After the educational sessions, an annual business meeting was held wherein officers were elected (*see related article on page 1*), committee reports given, a bylaws change approved allowing for both individual and vendor company memberships as Associate members, the financial status of the association reviewed, the state of the association summarized (*see "Executive Director's Annual Report" on page 11*), and future convention locations announced. Ryan Wainio of Investors Title Insurance Co. won the door prize.



Ryan Wainio won the door prize

Right: Claims panel (l. to r.): Jon Parce, Rob McNeil, Jim Pendergrass, and Alan Powell



Above: Underwriting panel (l. to r.): Sarah Friede, Jane Barkley, Steve Jones, Al Gardner, and Hunter Meacham.



North Carolina Land Title Association is among other associations and companies recognized by the Grove Park Inn and Resort on a plaque in the latter's Vanderbilt Wing for holding the NCLTA 1999 annual convention during the Resort's Spa construction.

Convention manuscripts available

The following five manuscripts from the 2005 convention held in Ashesville are available for the price of copying, shipping and handling.

Please send me the 2005 Convention manuscripts (*quantities are limited*):

<u>No.</u>	<u>Manuscript</u>	<u>Cost</u>
_____	"Jurisprudential Astronomy: Tracking Real Property Law's Recent Trajectory through North Carolina's Gravitational Field (Selected Cases & Legislation)" — Patrick K. Hetrick	\$7.50
_____	"Legislative Update" — Christopher L. Burti	\$5.00
_____	"A Rose by any other Name: Is your contract really a contract?" — Margaret Shea Burnham	\$5.00
_____	"Claims Panel Questions" — Panel	\$2.50
_____	"Underwriting Panel Questions" — Panel	\$2.50
_____	Total Package—One of each manuscript listed above	\$22.50

Total enclosed = \$ _____

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Executive Committee meeting summary

The NC Land Title Association Executive Committee met on Thursday afternoon, September 15, 2005, in Gary Whaley's suite at the Grove Park Inn. After reviewing the minutes of the May 17 meeting and August 17 conference call—wherein a proposed bylaws amendment to the Associate member category was approved for presentation to the membership at the annual meeting—and receiving the Treasurer's report, the plans for the 2005 convention and fall newsletter issue were reviewed. Legislative Committee Chair Jay Hedgpeth summarized the status of legislation for the Long Session (see related article on page 4). Two attorney members were approved.

The results of the summer membership survey were discussed. Staff was instructed to explore specific resorts with mid-August dates for the 2007 annual convention and to offer October Research an opportunity to advertise in the newsletter since there still appeared to be some interest among the membership in subscribing to their two publications, *The Title Report* and *The Legal Description*.

The following meeting of the Executive Committee was November 15, 2005, at Mid-Pines Resort as the association's headquarters conference room was under reconstruction at that time.

Executive Director's annual report

During the annual business meeting of the association held on September 17, Executive Director Penney De Pas reported that the association had 11 Underwriter members (two new underwriters this year), 11 Agency members, 80 branches, 34 directory/additional personnel listings, 69 Attorney members, seven Associate members, and two Honorary members. A membership survey of title company members was conducted in June with a 33 percent response rate. The information will be used in the Association's strategic planning process. A leadership training for the new officers was scheduled for October 14 in Greensboro.

Convention attendance was higher than it had been since the late 1990s. Attending the convention were 94 people, including 39 title company representatives, 16 attorneys, 27 guests, two teens, and two staff. A record 60 people attended Friday's CLE session.

The Association ended its 2004 fiscal year with a startling \$23,500 loss due to a reduction of five agency memberships caused by the acquisition of those separate agencies by one company, an \$8000 room block attrition charge by The Boar's Head Inn, \$2000 less in 2004 convention registrations and \$5000 more in 2004 convention expenses, and some other miscalculations in anticipated revenues, which caused a "going concern" note in the CPA's year-end review

report. However, 2005 has witnessed an increase in underwriter dues, advertising revenues, convention revenues, and sponsorship income.

The association's web site has an average of 1500 hits per month, although we are not sure what the ratio of spammers to legitimate inquiries is. The association's headquarters has also noticed an increase in the number of general inquiries about "opening up a title/abstract/escrow/settlement company."

The following title companies were thanked for participating in the joint sponsorship of the Real Property Section Convention social events at The Greenbriar:

- Attorneys Title Insurance Agency
- Chicago Title Insurance Co.
- Commonwealth Land Title Insurance Co.
- Fidelity National Title Insurance Co.
- First American Title Insurance Co.
- Investors Title Insurance Co.
- Lawyers Title Insurance Corp.
- Statewide Title, Inc.
- Stewart Title Guaranty Co.
- The Title Company of NC

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President's Message

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increase membership and interest in NCLTA; we see new agencies popping up everywhere and hope they join. The larger our organization becomes, the more diversity of opinion there will be. It is the job of every leader to listen to different opinions and make decisions that incorporate those opinions. How does that work if those opinions are different from the principles of the leader? That's an answer I'll let you know next September, when I'm looking back at what I did (and didn't) accomplish. In the meantime, I am "old school," having been trained in this industry by people who have me absolutely convinced that the way it's been done is the best way to keep doing it. I am not opposed to change, but I am opposed to change purely for change's sake. I hope to continue the fight for integrity and ethics that our past presidents have fought. I don't oppose competition in the marketplace, but it must be fair and legal according to RESPA and all other applicable laws. I don't have anything against making closings easier or cheaper for consumers, but it should not cost them more in the end. I'd love to help make attorneys' jobs easier, but they can't rubber-stamp opinions prepared by a title searcher they've never met for property in a county they've never set foot in. We are largely our own gate-keepers and, because of that, have an even greater responsibility than if we were closely scrutinized. We have filed rates, but it is up to us to ensure that they are followed in our own offices. We know what constitutes an adequate search period, but do we actually make attorneys do a reasonable search?

The third point that Rudy Giuliani spoke about that made an impact on me was his discussion about teamwork. The Executive Committee is diligently working to keep up with the pace set by our past presidents. Whatever is accomplished this year will be done only by a group effort. We will once again need to be actively involved with legislation that affects our industry and real property attorneys; we are continuing to monitor filings with the Department of Insurance in an effort to keep mortgage impairment out of North Carolina; and we have started an Education Committee. We would love to see more people actively involved with NCLTA and hope that you will all decide to participate in some manner. You can contact anyone on the Executive Committee for a list of committees or special projects.

Finally, I'd like to encourage all of you to not just become involved with NCLTA but with the general industry. If you're not a member of ALTA, I encourage you to join; it's an invaluable resource. Everyone in the settlement services industry needs to know about RESPA reform, the SMART Act, how Fannie Mae and Freddie Mac are looking to get into title insurance... the list goes on.

Title insurance is a critical component of more than just individual closings; it's critical to the American economy as a whole. It's not something a lot of people know anything about or think about when they're buying or financing property, but to me that just means we're doing our jobs well. (Let's face it—we're the Volvos of the closing process.) What we do is important, and the way we do that job here in North Carolina is even more important. Let's work together to keep it that way.

Convention Calendar

ALTA 2006 Federal Conference

March 5-8, 2006
The Fairmont
Washington, DC

ALTA 2006 Tech Forum

April 30 - May 2, 2006
Mandalay Bay Resort & Casino
Las Vegas, NV

NCBA 2006 Real Property Section Convention

May 4-6, 2006
Kingston Plantation
Myrtle Beach, SC

NCLTA 2006 Annual Convention

September 14-16, 2006
Wild Dunes Resort
Isle of Palms, SC
www.wilddunes.com
www.sciway.net/city/islepalms.html
www.isle-of-palms.sc.us/action.lasso?-response=index2.html