FLTA Tallahassee Report

Serving Over 4500 Title Professionals Throughout Florida
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www.flta.org • Louis Guttmann, President
Lee Huszagh, Executive Secretary-Treasurer

February 2005

President's Message by: Louis Guttmann

Reporting from Tallahassee
by
Louis B. Guttmann

The Winter Workshop and Seminar for 2005 was held at the Radisson Hotel in Tallahassee February 8th – 10th. This traditional meeting is an important one for your association in that it immediately precedes the beginning of the Florida Legislature's session. Our committee meetings provide the working framework to discuss and evaluate the legislative proposals of which we are aware. Additionally, these committee meetings and reports provide a big part of the agenda for the board to help focus the policy issues and set the direction for your association. This year is no exception. There are a number of items that we are closely following.

First, a significant amendment to the title insurance statutes is proposed in that the definition of title insurance would be amended to include insurance of owner's and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code. Both underwriters and their duly appointed agents would be authorized to issue such coverage. There are a number of states outside of Florida where this type of coverage is available through a title insurance underwriter and this demand is pushing the proposed change in Florida.

Second, there has been proposed legislation which would authorize title insurance underwriters and their agents to release mortgages in situations where the agent or underwriter has paid off the mortgage. This particular legislation has been a project of some title insurers in conjunction with the Real Property, Probate and Trust Law Section of The Florida Bar. The current proposal has drawn the attention of the Florida Bankers Association and it is not known at this time whether the proposal in its current form will meet the requirements of both groups.

Third, the Florida Association of Realtors is again proposing legislation to secure commercial commissions and fees owed them by liens. As you may recall, a lien on commercial real estate proposal was vetoed by Governor Bush last year in large part due to the concerns of title insurance agents. It is our understanding that FAR is looking to alternatives to this proposal which would meet their need to insure payments of duly earned commissions in commercial transactions to the real estate brokers involved.

In order to keep watch on these matters as the legislative process begins, your board will meet via telephone conference calls frequently during the session so as to better track and provide input on these legislative matters and others which directly affect our association members.

The Winter Workshop also provided an opportunity to meet with those within the Department of Financial Services who are charged with overseeing the regulation of our industry. In that context we were pleased to welcome Belinda Miller and Barbara Owens to our meetings and look forward to working with them in the coming year.

As has been previously reported, your board has proposed a revision of the dues structure to provide a simpler and more easily understood dues mechanism which would also facilitate increasing membership in our association. Please let me or any of your board members know of any questions or concerns you have regarding this proposal which will be voted upon at our fall convention.

Lastly, again I invite you to become active in your association by joining a committee and attending your association meetings. You may do so by contacting any committee chair, or any board member, or myself, or Lee Huszagh.

FLTA Mourns Drake Circle

Drake Circle, 73, of South Pasadena died Saturday (Feb. 5, 2005) at Palms of Pasadena Hospital Hospice Care Unit, South Pasadena. He was born in Springfield, MO., and came to the area in 1958 from Franklin, Ind. He worked in the land title insurance industry and was a past president of the Florida Land Title Association. He was president of the Home Owners Beachwalker Association of Harbourside and a member of the St. Petersburg Area Chamber of Commerce, the Sertoma Noon Club of St. Petersburg, the St. Petersburg Yacht Club and the Pasadena Yacht and Country Club. He was a Navy veteran of World War II. He enjoyed athletics and was an avid golfer. Survivors included his wife of 49 years, Mary; and a son, Kenneth, St. Petersburg. Beach Memorial Chapel, St. Pete Beach.

Firewalls and Spam Filters Block FLTA e-mails

It has come to our attention that many of our electronic mailings are being blocked by spam filters and firewalls installed on members computers. If you are not having this problem and are getting our newsletter via e mail and wish to continue to receive it electronically please so indicate by sending an e-mail to jenni@flta.org stating you elect to receive the newsletter by e-mail. If you would prefer to receive the newsletter by mail, do not contact our office and you will continue to receive it in that fashion. The most important factor is providing our members with timely information and we strive to accomplish that. You should also check the Association website at your convenience to obtain news and information on upcoming programs. www.flta.org is the address.

CLC/CLS TEST APPLICATIONS

The CLC/CLS test applications were sent in the December's newsletter. For those of you wishing to obtain the CLC/CLS application package please contact the association office before March 10th at 800-552-1065.

Application deadline for the CLC/CLS is April 1st.

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Florida Land Title Association
Basic Title Insurance Handbook

ORDER FORM

A desk reference covering all aspects of Title Insurance

Includes revisions of Rule 4-186 and 4-228

FLTA Members	$50.00
Tax	3.75
Shipping	4.00
TOTAL	$57.75
Non-members	$75.00
Tax	5.62
Shipping	4.00
TOTAL	$84.62

_____ copies @ _____ each

Total amount enclosed: _____

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FLTA Monthly Job Board

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TITLE INS. SALES/MARKETING REP

Ready for your next career step? Our company has it. We are seeking a motivated & outgoing individual for a Title Insurance Sales Representative in the Palm Beach Gardens, FL area. The experienced candidate will establish & maintain relationships with major accounts. Responsibilities will include indentifying and initial contact as well as presentation of services. Fax or email resumes with salary requirements to: FAX: 561-296-4460 EMAIL: Kathi@oceansoundtitle.com

2005 New Members

Arbor Title Services of Tampa Bay, Inc.
Tampa

Calhoun Liberty Abstract Company
Blountstown

Estate Title of St. Augustine, Inc.
St. Augustine

Greenlink, LLC
Jacksonville

H & S Title and Escrow, Inc.
Destin

Ocean Sound Title, LLC
Palm Beach Gardens

Owners Assurance Title Agency, LLC
Jacksonville

Ryan and Marks Attorneys, LLP
Jacksonville

Sunshine Title of the Keys, Inc.
Key Largo

Town & Country Title Guaranty of Hollywood
Hollywood

United Title Exchange
Orlando

Adverse Wall Street Journal Article Disparaging Title Insurance rates answered by ALTA's Jim Maher:

Dear Mr. Grueskin:

This letter is in response to the Feb. 10 article by Terri Cullen, "Title Insurance Protects Lenders- So Why Shouldn't They Pay for It?"

The article suggest that lawmakers should force lenders, not consumers, to pay for title insurance, which would generate competition and therefore lower prices for title insurance. Ms. Cullen's premise that lenders would absorb these costs without passing them on to consumers goes against basic business principles and is a bit naïve. Banks are in business to make a profit, and they charge for all expenses associated with even a basic account.

Ms. Cullen makes a few points that seem to be without factual backup. First, she states that if lenders were made to pay for title insurance, "premiums would become more fairly priced." The title industry is heavily regulated within each state, where departments of insurance are often responsible for setting or overseeing rates charged for title insurance premiums. Even if lenders were required to pay for title insurance, their payment would not change how the departments of insurance regulate the title industry.

A somewhat more esoteric but vital piece of information Ms. Cullen failed to note is that in a large minority of transactions nationwide, the borrower only pays a small, flat fee (called a "simultaneous issue" charge) of between $50 and $200 for the Loan Policy covering the lender. It's different to see how such a charge could be significantly reduced through any regulatory measure!

Ms. Cullen also alleges that "there's fat to be cut" in title industry, a conclusion based on speculation from the Colorado investigation and a statement from one industry source. It is difficult to comment on the Colorado investigation since no one is familiar with exactly what the charges are and what is being alleged. It is unfair to generalize that the entire industry may have fat based on the speculation of one investigation.

Regardless of the terms, these transactions represent a small portion of the total transactions involving title insurance nationwide. Moreover, they involve "B-to-B" transactions, not the kind of retail, one-off transactions most consumers experience.

She writes about RESPA reform, expressing the hope that the current administration will "champion the effort to lower closing costs for homebuyers- with title insurance at the top of the list." If you were to examine a list of closing costs, you would see that title insurance is a small fee when compared to the fees paid to the lender and the real estate broker also involved in the transaction. Why single out title insurance?

Reducing title insurance premiums would have the impact of reducing coverage, putting homeowners at risk and jeopardizing the lender's ability to sell loans in the secondary mortgage market- a market that has made mortgage loans more accessible to more people, especially those who previously could not qualify to buy a home.

We were disappointed that Ms. Cullen made so many assertions that did not seem to be backed up by fact. We continue to be surprised that a business journal like the WSJ is so consistently negatively disposed in their editorial and reporting toward title insurance generally.

Title Idol Debuts at 2005 Convention

The FLTA will debut the soon to be popular musical talent search at our annual meeting in St. Augustine. At the conclusion of our Installation and Awards Banquet on the Thursday evening we will present our panel of judges with the musical talent of contestants gleaned from the ranks of our membership. We will have prizes for best female and male vocalist, best group, and of course a booby prize for least likely to succeed in the music world. Don't be shy it is all in good fun. Karaoke equipment will be used for the back up music and we will need to know your song ahead of time so that we have it in our library. Please register your name and your groups name and tune on the sign up sheet contained within the registration materials. The music will continue for dancing after the selections of our FLTA "Title Idols".

MRTA May Extinguish Right of Entry to get Minerals

Noblin v. Harbor Hills Development, L.P.,
30 Fla. L. Weekly D_____(Jan. 14, 2005)
(Fla. 5th DCA 2005)

Title to certain property was vested in the Raineys. In 1948, they conveyed to E.C. Huey "one-half of the mineral and oil rights, including the right to exploit the same" on the subject property. In 1950, the Raineys conveyed the property with no mention of the previously conveyed oil and mineral interest in Huey. Through mesne deeds the property was eventually conveyed to Harbor Hills and Schell.

Harbor Hills and Schell sued to quiet title to the subject property against a number of defendants including Noblin, an ultimate heir from Huey. Harbor Hills and Schell did not contest Noblin's ownership of one-half of the oil and mineral rights but claimed that Noblin did not have an easement interest in the property or in the alternative the easement was extinguished under MRTA. The trial court held that the easement was extinguished by MRTA.

On appeal to the Fifth District Court, Noblin argued that two exceptions to MRTA keep the easement from being extinguished. She claimed that the exception relating to easements disclosed in the muniments of title after the root of title applied because a 1980 deed refers to the 1948 deed by official record book and page. She further claimed that the exception for easements "so long as the same are used and the use of any part thereof shall except from the operation hereof the right to the entire use thereof" because she had an affidavit that Huey on many occasions extracted clay, limestone and other minerals and that he "spent a great deal of time and money in pursuit" of "oil and natural gas."

The appellate court reversed the trial court's summary judgment, holding:

- The "right to exploit the same" created an easement that allows the mineral estate holder the right to enter the property to search for and extract one-half of the oil and minerals located thereon.

- Even if the "right of to exploit the same" provision was not included in the 1948 deed an implied easement would have been granted.

- Noblin's expressed or implied easement may be extinguished by MRTA unless an exception applies.

- The trial court's summary judgment was reversed because material issues of law and fact exist regarding the two MRTA exceptions that precluded entry of a summary judgment.

The appellate court emphasized that the trial court's summary judgment only held that the easement was extinguished by MRTA, not the actual oil and mineral rights owned by Noblin.

GRA:saj

Case provided by Attorneys' Title Insurance Fund, Inc.

Statutory Way of Necessity Claim Not Barred by MRTA

Blanton v. City of Pinellas Park,
854 So.2d 729 (Fla. 2d DCA 2003),
rev'd, 29 Fla. L. Weekly S_____(Oct. 21, 2004)
(Fla. 2004)

In 1910, Pinellas Groves, Inc. conveyed a 10-acre parcel to Blanton's predecessor in title. It was landlocked. After the conveyance, the only reasonable and practical access to the landlocked property was through Pinellas Groves' remaining land. Blanton purchased the landlocked 10 acres in 1975.

In 1997, Blanton filed suit for a statutory way of necessity pursuant to Sec. 704.01(2), F.S. Blanton alleged that he had attempted to negotiate access with the successor in interest to Pinellas Grove, but it had demanded in excess of $1.15 million for access over the strip of land which in 1997 had an assessed value for property tax purposes of $18,100. The trial court held that Blanton's claim for a statutory way necessity was barred by the Marketable Record Title because the right was not timely asserted.

On appeal the Second District affirmed the trial court's judgment, holding that Blanton's claim to a statutory way of necessity was time-barred in light of the Florida Supreme court's prior holding that "statutory or common law ways of necessity are subject to the provisions of the Marketable Record Title Act." However, because the prior case arose in the context of a common law way of necessity, the appellate court certified the issue to the Florida Supreme Court as being of great public importance.

On review the Florida Supreme Court reversed the lower courts, holding that public policy weighs in favor of holding that MRTA is inapplicable to statutory ways of necessity. The court stated it receded from statements in the prior case to the extent they can be construed as holding that MRTA can act to extinguish a valid claim to a statutory way of necessity authorized under Sec. 704.01(2), F.S.

GRA:saj

Case provided by Attorneys' Title Insurance Fund, Inc.

No Title Insurance Coverage for Usurious Mortgage

Lawyers Title Insurance Corporation v. Wells,
29 Fla. L. Weekly D1980
(Fla. 5th DCA 2004)

Benny and Kathy Wells made a $65,000 loan to Theresa Fogarty which was secured by a note and mortgage executed of Fogarty. The note dated Apr. 18, 2001, provided that Fogarty would repay the Wellses as follows: "Principal and interest payment in the amount of $70,000 shall be due and payable in full on May 19, 2001." Lawyers Title issued a $65,000 loan policy of title insurance to the Wellses.

Fogarty defaulted on the loan. After the Wellses foreclosed on the property, the mother-in-law of Fogarty came forward and contended that the deed of the mortgaged property from her to Fogarty was a forgery. The Wellses made a claim under their loan policy. Lawyers Title filed a declaratory action against the Wellses regarding its obligations, if any, pursuant to the policy because its policy contained an exclusion for usurious loans. The trial court ruled for the Wellses. The trial court found that the loan contained both legal and illegal terms, refused to enforce the illegal usurious portion (interest rate of 92.3 percent per annum), but enforced the remainder of the loan requiring the repayment of the principal amount of $65,000.

On appeal the Fifth District Court reversed the trial court's judgment, holding that an unenforceable usurious loan, one with interest rate exceeding 45 percent, cannot give rise to an insurable interest and without an insurable interest the Wellses could not enforce the title policy.

GRA:saj

Case provided by Attorneys' Title Insurance Fund, Inc.