



FLTA Tallahassee

Report

Serving Title Professionals Throughout Florida

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Pat Hancock, Esq, President
Alan Fields, Esq, Executive Director

PRESIDENT'S MESSAGE

- by Patricia (Pat) Hancock, Esq.

The American Land Title Association Federal Conference was held March 13 through March 17 in Washington, D.C. Federal legislation and RESPA were some of the topics of various meetings and presentations, but the main focus was "Lobby Day", Wednesday, March 16. The Florida Land Title Association was well represented at the conference by members Beverly McReynolds, Sue Geigle, Jim Russick, Norwood Gay, and myself.

On Lobby Day, the FLTA representatives were split up into two teams, each with assigned appointments with Florida's congressmen and women throughout the day. Our message was to champion our title industry in today's real estate mortgage marketplace, and warn of the possibility of detrimental government-sponsored enterprises (GSEs) reform. (GSEs are a group of financial service corporations created by government, including Fannie Mae and Freddie Mac.) GSEs serve to enhance the availability and reduce the cost of credit for borrowers through their guarantees, bonding and securitization. "As the Administration and Congress seek to reform our housing finance system, they should factor into their decision-making the considerable benefits that a government presence in the secondary mortgage market provides to market competition and efficiency. The American Land Title Association (ALTA) suggests that we scale the government's presence back to its original and limited mission: to provide stability in the secondary market for residential mortgages."

ALTA opines that "without a government role in the secondary mortgage market, the market-standard 30-year fixed-rate mortgage that is pre-payable without penalty will likely be much more expensive and inaccessible to most Americans." Proposed reform could also result in borrowers being required to pay as much as 30% earnest money deposits, which might preclude most middle income borrowers from purchasing a home. Also, the proposed "elimination of Fannie Mae and Freddie Mac would reallocate the market share to the largest lenders, shifting the mortgage business from local contacts to national contacts, crowding out smaller loan originators. Jobs will be lost at small businesses including title agencies, appraisers, attorneys and property inspectors. Each of these small businesses provides crucial services to small, community-based lenders during the mortgage transaction." It is estimated that small, community-based lenders originate 44% of all mortgage loans. "The GSEs serve as an effective counterbalance to the largest lending institutions." It is feared that large institutions may provide all the closing services through their own in-house or affiliated businesses, which may dry up the market for local businesses, if reform were to be steered toward the large lending institutions.

“Standards set by Fannie and Freddie protect the integrity of the collateral used to secure mortgage loans. Uniform underwriting standards are needed to ensure homes are accurately appraised for value.” Assurances provided by Fannie and Freddie fortify the integrity of mortgage loans. And, our economy is strengthened by the availability and origination of quality mortgage loans, based upon sound financial underwriting by the lender. The true value of the collateral must be ascertained; the credit-worthiness of the borrower for the contemplated loan should be determined; and uniform standards and guidelines will yield better mortgages than we have experienced in recent years past.

“Equally critical to how this collateral risk is underwritten” are the services provided by title agencies in examining the chain of title to the real property. A properly closed mortgage loan and title insurance add more value and integrity to the loan, ensuring confidence in mortgage loan investments. Buyers can be confident about purchasing property because their purchase can be insured against fraud and defects in the public record, and lenders are more willing to lend because recourse to the collateral is guaranteed.

“Universally acceptable underwriting standards increase market efficiencies and reduce underwriting costs, producing a savings for the consumers. Reform of Fannie and Freddie is needed. The title industry strongly urges the Congress and the Administration to preserve benefits currently provided by the GSEs in our future housing finance system.” The request is to maintain a government presence in the secondary mortgage-market, set uniform and universally acceptable underwriting and loan origination standards, which include the purchase of a title insurance policy, thereby lowering the costs of providing credit to consumers and enabling the economy to grow.

You, as land title professionals, are important to our national economy and mortgage lending practice. The public is benefitted by your work in many ways. “At no cost to taxpayers, the land title industry collects \$1.75 billion per year in back income taxes. At no cost to taxpayers, the land title industry collects \$3 billion per year in delinquent real estate taxes. At no cost to taxpayers, the land title industry collects \$325 million per year in delinquent child support payments. And the land title industry spends \$225 million per year to correct errors in the public property records.” Your work brings down the risk of a mortgage loan, which reduces the costs of borrowing for the consumer because investors are more apt to invest in mortgages that are backed by GSEs and title insurance. You should be proud of your profession and take every opportunity to educate others of the value of your work. You add value and you are worthy. Now, go out there and close those deals with pride!

Check out the cool picture from DC on the next page!!

What a wonderful picture of our White House... AND our FLTA President!

Thank you Pat for sharing this with us



KNOW YOUR LEGISLATORS!

I never thought of myself as someone who would be discussing legislative matters with our law makers. However, since the beginning of 2011, I have had face to face meetings with 10 legislators and 6 legislative aides, some at the state level and others at the national level. What I have learned in this process is that we really know much more about what we do than many of them. When you think about it, we each spend the majority of our professional life concentrating on one field of endeavor or another. If someone leaves the private sector to devote themselves to public service, there are a myriad of new industries with which to become familiar in a very short period of time.

Therefore, they actually need professionals from the various industries to be willing to meet with them and provide a summary of how a certain initiative might affect both the industry itself and the consumer of that product or service.

While many legislators are attorneys, few have real estate experience let alone title experience. Today, we have many new people sitting in both the House and Senate who have just left the private sector. The time is right to reach out to them and let them know what we do and how we help the economy and the consumer. They will actually appreciate your time!

Of course, lobbying has to be done in an organized fashion and you must have a clear message. We are fortunate that we have our Association to prepare us for our day in Tallahassee and the American Land Title Association to organize our day in Washington, D.C. Through their efforts, the title industry has spoken with over 40 legislators in Tallahassee and 200 in Washington, D.C. in the past few weeks.

During our Winter Meeting, Julie Myers and Alan Fields prepared us by helping us to understand the philosophy of the new administration in Tallahassee. We were given a list of talking points to discuss. Smith, Bryan and Myers had arranged the appointments with the legislators. All we had to do was attend the appointments, deliver our message and leave behind the prepared materials that explained more about our industry. The day at the Capitol in Washington, D.C. worked the same way. We visited members of Congress (or their Legislative Aides) from Florida and followed the same procedure.

I also learned during this process that everyone in D.C. is very polite and it seems that the more power they have, the more polite they are! It is incredible how busy they are yet they are willing to devote their time to learn about us. They are of course very focused on the economy and anxious to hear where we can assist in the recovery. Some of our meetings were in lovely offices with the door closed and the complete attention of the lawmaker. Others were in the hallway with 10 people speaking at once. However, no matter the setting, the message was well received.

Next year, I hope to see all of you at our Legislative (a/k/aWinter) Meeting in Tallahassee and then at ALTA's Federal Conference in Washington, D.C. Be sure to wear comfortable shoes and a smile. Remember, our livelihood is in the hands of the legislature. Let's make sure they know our value!



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2011 Upcoming Events

June 12, 2011 - CLT Annual Testing

The CLS and CLC tests will be given in various locations on Saturday June 12. The qualifications, applications and study outlines can be found on our website. The deadline for applying is April 8.

November 2 – 4, 2011 – FLTA Annual Convention PGA National Resort & Spa, Palm Beach Gardens

The 2011 FLTA Annual Convention will be held at the Beautiful PGA National Resort. Bring your clubs. See your friends and catch up on everything happening in the wonderful world of title.

A Note of THANKS from Curtis McClung, CLS – First American Title Insurance

On January 19, 2011, a continuing education seminar was held by First American Title Insurance Company in Ocala, Florida. This event was open to all licensed title agents, attorneys and paralegals. Alan Fields, representing FLTA, was a guest speaker and contributed 2 hours of CE credit. There were over 90 attendees present for this seminar. In addition to his CE presentation, Alan spoke to the audience concerning the upcoming winter meeting, pending legislation and the need for involvement in FLTA. On behalf of First American Title, we would like to say THANKS! to Alan and FLTA for a job well done.

A Letter of THANKS from the Florida Surveying and Mapping Society

Most of you are aware of the recent proposed legislation that would have deregulated surveying and mapping in Florida. FLTA was very much against this proposal and the following is the letter we received from our surveying friends regarding our support of their industry.

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Florida Surveying and Mapping Society

March 29th, 2011

Alan B. Fields
Executive Director
Florida Land Title Association
249 East Virginia Street
Tallahassee, FL 32302

Dear Mr. Fields:

On behalf of the Florida Surveying and Mapping Society, I want to personally thank you and your organization for all of the help you provided in our fight of HB 5005, which included deregulation of surveying and mapping. I felt it was extremely important for all Committee members reviewing the Bill to hear from other professionals that use our services. Factually, everyone heard your voice loud and clear!

Our relationship with Florida Land Title Association goes back many years to the time when Surveyors and Mappers certified that their work was in accordance with the requirements of the FLTA and FSPLS. It's nice to know that we have strong allies and can count on them when things get tough. I want your members to know that you have that ally in us as well and we look forward to a renewed partnership with you and stand ready to assist you when needed. Once again, our thanks to you.

Sincerely,

Daniel D. Ferrans
President

An Affiliate of the American Congress on Surveying & Mapping

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We're so HAPPY to have you with us!

In these tough economic times it can be difficult to find something to cheer about. FLTA membership has taken a beating like everything else in our world these days, but we do have something positive to report. The following is a list of very smart companies who have taken that first big step and joined our Association, or have rejoined after a short hiatus.

Ally Parker Brown Title Ins. Agency

Diane Ally
Port St. Lucie, FL

Bosshardt Title Ins Agency

Kim Bosshardt
Gainesville, FL

EWM Title

Maria deAndrade
Coral Gables, FL

E-Doc Solutions, LLC

Mitchell Freijo
Coral Gables, FL

Exacta Land Surveyors, Inc

Scott Shelfer
Miami, FL

Flounlacker Law Firm, PA

Paul Flounlacker
Pensacola, FL

Hometown Title & Closing Services

Nacole Klootwyk
Punta Gorda, FL

Island Title & Escrow Corp

Elaine Mahnke
Merritt Island, FL

Island Title of St. Augustine, LLC

Vickie Rianda
St. Augustine, FL

Magnolia Title Agency, LLC

Mary Castro
Dade City, FL

Precision Reconciliation Services, LLC

Kenny Collier
Sandy Hook, VA

Quintairos, Prieto, Wood & Boyer, PA

Michael Barker
Jacksonville, FL

Rels Title

Paige Floyd, CLC
Destin, FL

Title Company of Brevard, Inc

Michael Schneider
Melbourne, FL

Did you Know.....

By 1937, there were over \$97 million (a big number in 1937 dollars) in unpaid property taxes in Florida, and local governments were unable to sell enough tax certificates to fund necessary operations. Since they couldn't sell tax certificates, they passed the Murphy Act and "took back" millions of acres of Florida land without any deed, without any conveyance or other record indicating state ownership being filed in the land records. The first conveyance after that was a deed from the Trustees of the Internal Improvement Trust Fund. So today, a title examiner will often find a "break in the chain" of title.

Naked Sats aren't Very Satisfying!

We are hearing of an upsurge in the number of fraudulent satisfactions and doctored payoff letters showing up at closings.

We urge all of our members to be VERY cautious of "Naked Satisfactions." If you find a satisfaction recorded - or delivered to your office prior to a closing - without a sale or refinancing of record that would have provided the funds, **DIG DEEPER**. Of course, people do pay off their mortgages, usually after many years, but they usually don't pay them off completely immediately before a refi or a sale.

Finding a "Naked Satisfaction" can be an indicator of fraud; or it may be that a refinancing hasn't yet been recorded; or was mis-indexed by the clerk (something you definitely need to know); or that someone won the lottery.

Dig a little deeper and confirm with the lender that issued the satisfaction, or online with MERS at <https://www.mers-servicerid.org/sis/> that the mortgage really was paid off.

I know this repeats the advice all of the underwriters have given many, many times, but we still hear of agents being caught in the trap of relying on a payoff letter brought to them by the seller – and later discovering that, through the magic of Photoshop®, the mortgage had been "reduced" by a significant amount.

So, if your seller, their Realtor®, or any "non-traditional" source brings you a payoff letter, thank them politely, but obtain your own payoff letter directly from the lender!

DON'T FORGET TO SUPPORT OUR ASSOCIATE MEMBERS

If you are not a title insurance underwriter or title insurance agent, then you are an associate member of FLTA. Many of us on the agency side have been classified as associate members when we join our local Realtor or builder trade associations. AGENTS - Remember how upset you were as a member of that local trade association when you find out other agents - who are NOT members and not supporting the local programs - seem to get a LOT of the title orders? Well, OUR associate members do more than "just pay association dues", too. They show up at our meetings and conventions, PAY for the privilege of displaying their products, often contribute additional funds to our luncheons, receptions, banquets, etc AND pay to advertise in our programs, brochures, and YES!! the Newsletters!! **DON'T FORGET OUR ASSOCIATE MEMBERS!** When you need a new product or service, be sure to check the member list and give our Associates the FIRST opportunity to earn your business.



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We would like to extend a special THANK YOU to our members who have taken the time to update their ad formats (including working with a novice in the publishing arena) and particularly for their patience and cooperation with making the necessary changes to your ad copy so they would WORK with our new Newsletter format. We so appreciate your continued support of our Association.

Many thanks to:

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for contributing to this issue. We can't do it without you!

Governmental Affairs Report – by Ted Conner, Esq. - Chairman

The Governmental Affairs Committee (GAC) is looking at a busy spring. At the time of this writing the 2011 legislative session has just opened. We have already identified over ninety bills for closer review. In addition to language currently in filed bills, amendments must be monitored for impact on the title insurance industry. Twenty-eight members of the GAC have received assignments and are currently reviewing pending legislation.

If a bill has the potential to affect how real estate is conveyed, property rights of the public or management of title insurance agencies the GAC may recommend a position to the FLTA Board of Directors. The Board of Directors may take a position in support or opposition of elements of a proposed bill. Alternatively the Board of Directors may take no position or offer technical support to a bill without taking a position.

The Florida Land Title Association supports the following pending legislation:

Title Insurance Bill

SB 1468

HB 1229

The bill incorporates the recommendations of the Title Insurance Study Advisory Council created by the Florida Legislature with amendments recommended by the Real Property Probate and Trust Law Section of the Florida Bar.

- Supports the promulgated rate structure and recognizes the importance of title insurance agents including both licensed title insurance agents and attorney agents.
- Consolidates title insurers and title agencies under one regulator to provide consistency in rule making and enforcement. Currently two agencies are regulating the same activity; the legislation will streamline government regulation.
- Requires annual collection of data from title insurers and licensed title agents. The information will include revenue, loss and expense data necessary in the analysis of

title insurance premium rates. The data received from individual agents will not be subject to public records requests.

- Includes Dept. of Financial Services (DFS) request for an “agent in charge” for each title insurance agency location.
- Modernizes the bonding and insurance requirements for licensed title insurance agents. Accommodates DFS’ request to remove DFS as holder of surety policy.
- Permits the regulator to outsource the approval of continuing education programs for licensed title agents and requires that continuing education include ethics in the subject matter.
- Attorney agents must maintain a separate trust account for real estate transactions such that the trust account may be audited by the attorney agent’s title insurers consistent with the rules of The Florida Bar.
- Current Florida law permits regulators to cancel any outstanding policies of a title insurer in liquidation. An amendment to the legislation currently being considered would protect the insureds of a relatively small south Florida title insurer currently in receivership until a comprehensive resolution to the issue can be addressed in future years. The amendment contemplates a \$25 surcharge on future policies of all title insurers, to be paid by the purchaser of the title insurance, until sufficient accommodation for future claims is made.
- The bill does not implement any change to current law regarding rebating title insurance premiums. Rebating of title insurance premiums is a politically charged issue. The issue will be considered in subsequent legislation.

Construction Liens on Leased Premises

SB 1196

HB 941

Working with the Real Property, Probate and Trust Law Section of the Florida Bar, FLTA encourages a legislative fix to cure the title difficulties caused by a highly technical reading of Florida Statute §713.10 in Everglades Electric Supply, inc. v. Paraiso Granite, 28 So. 3d 235 (Fla 4th DCA, 2010).

Florida Statutes §713.10 has long provided that a construction lien for tenant improvements (other than in a rental mobile home park) could attach to the landlord’s interest in the improved property if the improvements were expressly contemplated by the lease.

The same statute provides the landlord with a means of protecting their property against liens for unauthorized improvements by including an express statement in the lease that the landlord’s interest is not subject to liens for tenant improvements; and a notice is recorded in the public land records to advise a potential contractor or lienor that they do not have recourse to a lien on the landlord’s interest. The notice could take the form of either:

- a. Recording the lease or a short form of the lease which references the limitation on liability; or
- b. Recording a notice stating that all of the leases on a parcel of land prohibit the attachment of such liens and including the “specific language contained in the various leases prohibiting such liability.”

Because it creates a title issue when refinancing or selling the property, most landlords were advised not to record the individual unit leases and instead utilize the blanket notice as to all leases if they wanted this protection.

The Everglades Electric case held that a blanket notice did NOT prevent the attachment of liens to the landlord's interest where (a) not every lease on the property included the limitation language; or (b) any of the leases on the property phrased the limitation even slightly differently than the "specific" language of the blanket notice.

This ruling has created substantial additional work at the time of every refinancing or sale of rental property, and deprived landowners of the protections long provided by the statute simply because of a highly technical "error."

The proposed statutory amendment permits reliance on the blanket notice even if not all of the leases for the property include the lien prohibition language or the prohibition language in individual leases varies -- so long as the actual lease under which work is being performed contains the appropriate language.

"Hidden Liens"

SB 1072

This bill would require governmental entities to record a lien in the official records of the local county to create a lien on real property. The record lien must identify the property owner, tax parcel number and legal description of the property to be subject to the lien. Parties to a real estate transaction would no longer be required to purchase a separate tax search. Additionally, code enforcement actions would only be a lien on such property as is described in recorded liens. The bill would also extend the designation of homestead benefits of Sec. 222.01 Fla. Statutes beyond liens created by judgments.

At the time of this writing no House companion bill has been filed. There are bills that could serve as amendment vehicles.

Committee Activity

With appreciation I acknowledge the continuing work of the Governmental Affairs Committee to read and consider pending and upcoming legislation. As the Legislature takes action we will provide timely information on new laws affecting your industry.

We Love Our Cops!

We love our Cops – and wouldn't want to do anything that might place them or their families in harms' way. The Florida Legislature agrees. Years ago, they adopted §119.071(4)(d), which allows past and present law enforcement officers, judges, state attorneys, public defenders and other public servants to request that their home addresses, phone numbers and other information be redacted from records made available to the public. This is the "Right Answer."

However, some recording offices have mis-interpreted this law to require them to remove the address AND the legal description from a police officer's deed and mortgage. While a legal description can be used to find someone's home, the statute only requires the removal of the street address. As we all know, a deed or mortgage without any legal description at all presents problems both for the sanctity of the land title system and for the officer's investment.

Once you remove the legal description from the public records, that deed and mortgage will not be posted to the appropriate property in the geographic tract records on which most of us

rely. So when we do our searches, it will appear that this property is still owned by the prior owner, free and clear of liens (because the closer dutifully paid off and got a release for the seller's mortgage). Your only hope of finding this transaction is if someone notices that the taxes are assessed to someone not in title.

Even a grantor-grantee search will not necessarily pick up the transaction – because it shows no legal description at all in the clerk's index. As a matter of law, the redacted deed and mortgage does not provide “constructive notice.” So if the prior owner was to mortgage or even sell the property a second time (and yes, that would be criminal fraud), the new innocent buyer or mortgage holder would likely prevail over the police officer's “blacked out” deed and mortgage. Since it is the officer's own request that led to the changes in the otherwise valid deed, he has likely just voided his owner's title insurance policy.

This is not a good result for anyone concerned. A dedicated public servant loses his home and his insurance coverage – and you get a nasty claim and an understandably VERY upset customer.

If you are handling a transaction for anyone on this [list](#)* who might qualify to have their address redacted, caution them to carefully specify to the clerk that they are only to remove the street address and NOT the legal description from their deed and mortgage. And remind them that they will need to contact the tax collector and property appraiser separately to make certain they receive their tax notices. Some title agents obtain the forms from their local clerks and offer this as part of their closing services.

On the other side of the transaction – when you are handling the sale of a property and find that the legal description was improperly removed from the public record, you should have the selling officer sign a directive to the clerk that the record can be restored (since it will no longer be their home). Otherwise, the next owner will have a break in their chain of title. Some clerks will have their own forms for this, so it is best to call and ask their procedures.

We do not have a feel for the extent of the problem or how many deeds and mortgages have had their legal descriptions improperly redacted. FLTA will be working with the clerks' association and the law enforcement community to see if some clarification of the law or its interpretation would help avoid this problem for all.

*NOTE: the word “[list](#)” shown above is intended to access a URL link. If the link option does not appear when selecting list, then the full address is provided here for your convenience:

<http://duvalclerk.com/ccWebsite/resources/adobe/confidentialityProtectedGroups.pdf>

Keeping Up to DATE

Keeping our members informed of matters that impact the title insurance industry, is a primary focus of our Association. The quarterly newsletter will continue to keep you abreast of developments, but the term quarterly alerts you to the fact that the news stories that have a short shelf life may be stale when you read them. To stay on top of things on a daily basis consult the FLTA web site, www.flta.org.