

# Tallahassee Report

2017  
Issue #4

Serving Title Professionals throughout Florida

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**A Message from the President**

Karla Staker | Fidelity National Title Group



## President's Address

Thank goodness Hurricane Irma is behind us and hurricane season is almost over! Irma left 72 dead in Florida, injured many more, did untold property damage and caused 6.74 million households to lose power. But, all in all, we fared well considering the magnitude of the storm and its path over our state. Our hearts go out to the Virgin Islands, Puerto Rico and the other islands as they struggle to recover.

I am grateful for the massive disaster response effort that got us up and running quickly. When you are without power, the sight of a bucket truck - those trucks with the extendable cranes carrying a large bucket for raising workers to elevated power lines and tree tops - on your street elevates your spirits like nothing else.

Less than two weeks after the storm, the traffic in the north-bound lane of I-75 and the west-bound lane of I-10 was jaw-dropping. Hundreds upon hundreds of bucket trucks were heading back home. Often traveling in long caravans but sometimes alone or in small groups, this mass exodus of emergency workers, who had flooded into the state before the storm even hit to help us recover fast, was a poignant symbol of how fortunate we are to live in Florida.

The lesson we can learn from Irma is the value of preparedness. Whether preparing for a disaster or for a closing, having a plan, is critical.

I hope you have a wonderful fall season. See you at the convention!



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## An Old Claims Headache that Never Goes Away – Paying Off Home Equity Line of Credit Mortgages

During the past week, new claims that have all been created when a HELOC mortgage is paid off but the mortgage lender does not satisfy the mortgage and allows the borrower to make additional draws on the open credit line have been brought up to me by several title agents. Paying off HELOC mortgages has been one of the most common claim and risk issues that the title industry has confronted over the past twenty years. When the HELOC lender does not satisfy the mortgage and close the line of credit after receiving the payoff and the HELOC borrower continues to make additional draws the most common claims received by title insurers and agents involve the foreclosure of the open HELOC mortgage where the foreclosing lender joins in the new insured owner and/or mortgage lender or an inability to sell or refinance the property due to the open HELOC mortgage. It should be noted that the Mutual Indemnification Agreement among the title insurers does not cover HELOC mortgages.



Title insurers have issued underwriting bulletins on this issue over the years and their guidelines should be reviewed to make sure you are complying with their exact requirements for paying off HELOC mortgages in order to minimize the risk of incurring any liability. The guidelines provided by your title insurer are controlling but will likely include:

- 1 The written request for a payoff letter must be signed by the borrower and contain termination or freeze language directing the lender to suspend or freeze the credit line so that no additional draws are authorized upon issuance of the payoff letter. The lender may also have their own form which must be executed by the borrower to suspend or freeze the line of credit. The borrower should also surrender its checks and credit cards accessing the line of credit prior to requesting the payoff letter in order for all draws and charges to clear so that the payoff letter may be more reliable.
- 2 An updated payoff letter should be obtained from the HELOC lender immediately prior to the closing so that any additional draws, charges, interest, or penalties may be discovered prior to closing.
- 3 A letter from the borrower sent to the HELOC lender at the time the payoff funds are sent directing that the line of credit account be closed.

Reviewing and complying with your title insurers underwriting guidelines for paying off HELOC mortgages is essential for preventing claims and more stringent requirements such as the checks and credit cards accessing the line of credit being surrendered substantially before the payoff letter request can only help reduce your risk.



## Test Your Title Expertise

1. Tina Title Agent is reviewing a homestead probate disclaimer that was properly executed by the wife after the husband's death. The wife disclaimed her interest in the homestead that was owned by her husband. The decedent died leaving his wife and two adult sons. Decedent's will devised the homestead to his spouse in fee simple, if she survives him, and if she doesn't, to his older son. Both sons will have to execute conveyances to a purchaser.

True      False

2. Now Tina is reviewing another homestead probate disclaimer properly executed by the wife after the husband's death, wherein she disclaimed her interest in the homestead. This decedent also died leaving a wife and two adult sons. Decedent's will specifically devised the homestead to the wife for life, if she survives him, with remainder to the older son. Both sons will have to execute conveyances to a purchaser.

True      False

3. For another closing, Tina is reviewing a certified copy of an order to pay a civil penalty issued by the contractor's licensing board for failure to obtain a certificate of competency from the Department of Business and Professional Regulation. The order names the seller who happens to work as a contractor. Tina should treat the order as though it constitutes a lien on property owned by the contractor.

True      False

4. In 2009, Tom Thomas conveys land to the Tom Thomas Revocable Trust dated July 1, 2009, which is governed by Chapter 736. The revocable trust states that it is revocable but does not describe the mechanics of how to revoke the trust. In 2015, Thomas executes a codicil to his will that states that he revokes the Tom Thomas Revocable Trust dated July 1, 2009, and instead devises all of his assets to several charities. The codicil could revoke the trust.

True      False

5. In 2011, two owners of adjacent parcels executed and recorded an appurtenant joint driveway easement that would benefit and burden both of their parcels. Although the easement, was acknowledged, no witnesses appear on the instrument. In 2013, one parcel owner sold his property, but the title insurer would not insure the parcel together with the easement. In 2017, the other parcel owner sold his parcel, and the same title insurer was willing to insure the parcel together with the easement. The title insurance company made a mistake in refusing to insure the easement in 2013.

True      False



**Keep reading for the answers!**

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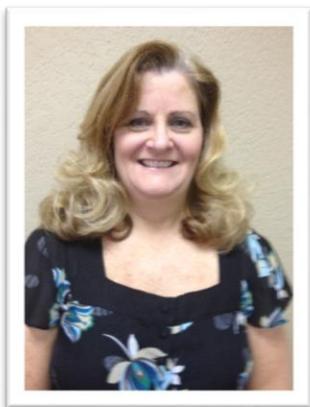
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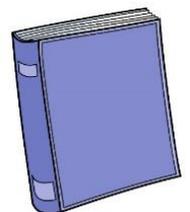
CLT Institute Council Chair Marcia Cameron, CLC/CLS | First American Title Ins. Company



The Certified Land Title Institute is proud to announce a new member. The new designee is Erin Hebert, CLC. The award will be presented to Erin at the convention in November. I look forward to the presentation of the award to Erin.

The institute is looking for new blood! If you hold the designation of CLC or CLS and wish to become involved in the institute, please reach out to me at [mcameron@firstam.com](mailto:mcameron@firstam.com). I look forward to hearing from you.

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**Government Affairs Chair**

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The Government Affairs committee has been busy since our last newsletter. As many of you know by now the organization's efforts at passing the Estoppel Bill were successful and the law became effective on July 1<sup>st</sup>. While we can take a little time and bask in a good job done well, there isn't time to sit back and enjoy a second or third umbrella drink.

There are several issues the committee is working on:

- 1) Follow up to the estoppel bill's passage. While we all hope that all the condominium and home owners' associations will read and follow the letter and spirit of the new law; we are not so naïve. As you bring them to us, we have been collecting evidence of violations and reviewing our options to assist in enforcement of the law. Please, if you have evidence of an HOA or COA willfully violating the law bring it to our attention.
- 2) The coming legislative year gets and early start and we got started on the Association's wish list. The membership submitted over half a dozen requests for legislative action. The GA committee reviewed each one, debated them and then voted to ask the Board of Directors to approve making four of them our current initiatives. The Board then reviewed those requests and voted to accept three of them to be the goals of the Association.

All three are related to fixing issues related to recording and public record keeping by the Clerks of Court. Due to space requirements, we can't flesh out the reasoning and arguments behind all three. But if you want more information do not hesitate to contact me or better yet, attend the next GA meeting and be fully informed!

- Making the use of Official Record Books and Pages mandatory for the indexing of all documents.
- Making mandatory the recording of probate documents related to real property inheritance.
- Making the recording costs for deeds and mortgages be a flat fee regardless of the number of pages.

The committee, through the Association's lobbyist, is currently fine-tuning proposed language for the laws and seeking sponsors in the Legislature. Stay tuned for how you can help get these important initiatives through the legislative process.

We are also monitoring several other legislative initiatives which have a bearing on our industry. We continue to work with our excellent partners in other industries to lend our expertise to those efforts. Again, if you want to know more, attend the next GA committee meeting.

- 3) Lastly, the committee has been working on the latest effort of the Department of Financial Affairs to amend the regulatory rules related to unlawful inducements. Started last Spring, the Department has been seeking to add to 69B-186.010 F.A.C. a clarification of actions by title agents which would be unlawful rebates and



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inducements as they relate to giving rebates or providing coverage for matters beyond the scope of the policy or closing protection letters. There have been several hearings, well attended by the membership of the Association, attempting to come to a common ground on the wording of the revised regulation. The latest hearing was held on Monday, September 25<sup>th</sup> (having been delayed a few weeks by all our best friend, Irma). The Association provided a draft of the regulation which seemed to be well received by the Department. And while we know that it will be revised somewhat, we are hopeful that the final version of the new rule will follow what the industry submitted.

We appreciate our regulators and their genuine and consistent effort at getting the industry's input on the regulations which affect our daily lives and profession. If you would like to see a draft of the proposed rule, please reach out to the Association and we will send it to you.

The next step of the process is the Department will review our proposal and other comments made to them during the hearing and afterward, submitted in writing. They will propose the revised rule and there will be another hearing for comments after which the final rule will likely be implemented. Stay tuned to the Government Affairs committee for additional details as they emerge.

I'd like to take this opportunity to thank all of the members who have participated in, thought about and discussed the issues, drafted legislation and rules and participated in the committee's works. Many of you don't know how much time and effort these folks put in on behalf of the industry. We are all the better for their thoughtful considerations of the community. I would especially like to thank all of their employers, who provide the time and money and freedom to focus on the Association and the industry as a whole. Thank you all!

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# Membership Corner

Hey Members, did you know that there is a special out there for “new members”? Maybe you can call some of your friends in the business and recommend that they join this year and the fee includes the remaining part of 2017 and all of next year, 2018!

Memberships are up, but we need more new Members to make our organization one of the best in the Nation, but we can't do that unless everyone helps. You can make a difference, even if you can have just one company sign up.

Also, if you have not signed up for the FLTA Convention in November, you need to do it now. Be sure to plan on attending the Thursday Night “Sail Away” where a cruise trip for 2 will be given away! I will be there in my cruise attire, will you???

We need all of our Members to help pass the word that there is a “new” Executive Director for FLTA and he is making a difference in our organization. So, jump in and join us in spreading the word.....come meet Scott Merritt at the Convention!

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## Title Industry of Florida - PAC

**FLTA would like to give a BIG thank you to those that have not only contributed a portion of their membership dues, but contributed even more throughout the year!!**

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**FLTA Executive Director**

Scott Merritt | Florida Land Title Association



As I write this I am in the Atlanta airport having just left two marvelous days with the American Land Title Association (ALTA) and meeting their tremendous team. It goes without saying, but it is refreshing to know, we are partnered with such a dynamic group. We are in a great industry and surrounded by top level players.

Since our last newsletter so much has happened and so much is about to happen. First, our Board of Directors met for their annual Summer Board Retreat where we identified our 2018 strategic priorities: Cyber Security; Data Call<sup>2</sup>; Workforce Development; Innovation; Recording Reform; and Build the Organization. We've created By-Laws to help govern and provide structure to our Title Industry Fund Political Action Committee (TIFPAC) and locked in on our 2018 legislative priorities.

We've hosted a pair of webinars with the latest on the updated ALTA Commitment Forms, hosted a lunch-and-learn in Fort Myers addressing cyber security with a Federal Bureau of Investigation (FBI) special agent, and attended multiple hearings with the Florida Department of Financial Services addressing the rule of "Unlawful Inducement". It has been a busy time.

Now Fall is here. Okay, well this is Florida and Fall doesn't hit until later in October, but hey – it's coming! With Fall, comes our 2017 Annual FLTA Convention. This year's program dubbed, *Charting the Course and Navigating the Future*, is presented by Old Republic National Title Insurance Company and PropLogix. The theme truly is fitting as there are many specific areas targeting the Land Title industry, but one of the most important is cyber security. Therefore, we will be hosting our partnered special agent from the FBI to address the issue and the steps we should take as an industry to protect ourselves. We will also have a panel discussion with industry experts who will provide industry specific insight and examples of theft. Additionally, an economist and an emotional intelligence speaker will give us a look into 2018 where we can be better equipped. The convention

will be another event “not to miss” and one where you’ll be able to collect required Continuing Education credits. Join us November 8-10 to not only address the now, but what is coming.

In closing, I am very encouraged as to what we have been able to accomplish in recent months and energetic about what is ahead. Henry Ford stated it so well, “coming together is a beginning; keeping together is progress; working together is success.” We are not in this alone, but are in it together and together we will accomplish much. I look forward to seeing you in November and wish those in hurricane disaster areas a speedy recovery.

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# ALSO NEW TO THIS YEAR'S CONVENTION: CASINO NIGHT!

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**Agents' Section Chair**

Timothy Steele | North American Title Company



As the strike of Hurricane Irma dissipates in our memory, and we are left cleaning up from it, I see we have yet another hurricane on the horizon, Nate. As of this writing it seems to be shifting west but still has a good swath of the Panhandle in its path.

The last thing we title agents, and all of Florida, need is another major impact.

As for title agents, a hurricane poses many challenges: office shut downs due to lost power or internet, spotty phone coverage, employees not able to report to work, delayed or cancelled closings, Fed Ex, UPS and other couriers being delayed or down, and even home owner insurance checks not getting to the insurance companies timely.

Of all these impacts, I have been pondering on the method of delivery of insurance checks to the insurance companies, especially in light of Irma, and potentially Nate. I would be dismayed to think an argument could be made that a recent buyer was not covered by insurance during a hurricane due to the check not getting to insurance company or not being cashed. I would be equally dismayed if that argument could be made even without any impending hurricane. As agents, we need to have every resource open to us to get the funds to the insurance company; however, there can be circumstances brewing in the Atlantic and Caribbean that are simply beyond our control and best efforts. There can also everyday circumstances, like checks not being cashed, although sent timely.



To this, I pose the idea of an electronic funds transfer for home owner's insurance. Perhaps a wire, or maybe an ACH, would be a more efficient method of remittance. I have been thinking about this for some time, and tried to inquire with some insurance carriers in the recent past.

Admittedly, I have not had much success with my inquiries thus far on moving to such a remittance platform. Perhaps I have not reached the right persons, or made a compelling enough argument.

Regardless, I still find the concept compelling, under any circumstances and especially as Hurricane Nate brews out there. We, as agents, need to be assured that there are systems in place available to us to get these funds out. This would be a benefit to the home buyers of Florida any way you approach it.

One may point to the pros and cons of wires (instant transfer, cost) ACH transmission (cheaper or free, potential recall period) and checks (been doing it that way for years, lost or uncashed checks, sent to wrong address), but I firmly believe that industries evolve, and better yet, get disrupted, with good reason. And this seems to always result in a more efficient end process.

So, I publish this article as the start of a collective discussion on this. I'm looking forward to speaking to you all at our convention in November and hearing which way this idea evolves and how we as an industry drive this concept to a more efficient system.



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## Test Your Title Expertise Answers

1. False. Since the devise of the homestead to the surviving spouse was a proper devise, the disclaimed interest passed in accordance with chapter 739, the disclaimer statute. Because the will provided that the homestead should pass to the older son if the spouse does not survive the decedent, then the homestead vested in the older son only. Sec. 732.4015(3), F.S., and Sec. 739.201(3), F.S.
2. True. Here the devise of the homestead to the spouse for life is an improper devise under the Florida Constitution. *In re Estate of Finch*, 401 So.2d 1308 (Fla. 1981). Thus, under Sec. 732.401(1), F.S., the spouse takes a life estate, and both sons take the remainder. Then under Sec. 732.401(4), F.S., if the surviving spouse disclaims the life estate that was created under Sec. 732.401(1), F.S., the interests of the decedent's descendants may not be divested. Thus, both sons must execute the deed.
3. True. Pursuant to Sec. 489.127(5) (h), F.S., a recorded certified copy of an order imposing a civil penalty constitutes a lien against any real or personal property owned by the violator.
4. True. See Sec. 736.0602(3), F.S., and *Bernal v. Marin*, 196 So.3d 432 (Fla. 3d DCA 2016).
5. False. Section 95.231, F.S., was revised in 2013 so that lack of witnesses on easements was cured 5 years after the recording of the easement. Before then, the statute applied only to deeds and wills. In 2013, the easement had not yet been recorded for 5 years.

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