FLTA Tallahassee Report

Serving Title Professionals Throughout Florida

James C. Russick, President

Alexandra J. Overhoff, Executive Director

249 E. Virginia St.
Tallahassee, FL 32302
850-681-6422

In this Issue:

A Message from the President

Jim Russick Esq.
Old Republic National Title Insurance Co

Change is Constant

The challenges facing the title insurance industry continue. Change is constant. The pace of the changes impacting the Association and its members continues to accelerate. As we work together to meet these many challenges, we will do so first with new leadership.

Alan Fields, our outstanding Executive Director, tendered his resignation but did so in a fashion to allow us to find a replacement and allow some overlap for continuity. Alan will be returning to the industry as an in-house counsel and, fortunately, he will continue to be involved in the FLTA as a contributing member rather than our Executive Director.

On August 22nd, the Board of Directors named Alexandra Overhoff the new Executive Director for the FLTA. Alex is a graduate of Stetson College of Law and a licensed Florida attorney. Prior to attending law school Alex was a registered lobbyist and legislative consultant at both a state and national level. She worked on the campaign for our current Chief Financial Officer, Jeff Atwater, and on his transition team after the election. This proven effective fund raiser will bring a fresh and energetic voice in support of the Association.

Alex will be immediately challenged, as we have been working on both regulatory and legislative issues all summer. The most visible regulatory issue will be the data call. OIR has approved the forms to acquire the necessary industry economic data from both agents and insurers. This information will form the basis for evaluating and adjusting the promulgated rates in Florida. But there remain several important steps before the data call will be finalized. The draft rule must first be approved by the Governor and the Cabinet at its meeting on October 10th. The legislature must give final approval of the data call collection rule. This will be a major legislative priority for the FLTA.

Alex has already participated in two lengthy conference calls hosted by the Florida Office of Insurance Regulation focused on rewriting portions of the Title Insurance rule. A re-write is necessary because the rule is currently out of step with recent legislative changes. It has been a large project spearheaded by the FLTA that began several years ago. Central to the discussions are issues like forms approvals and withdrawals, revenue neutral rate simplification, and legislatively driven corrections

The Association also anticipates that there will be a title insurance bill in the coming legislative session that will address technical difficulties with current statutes that we have identified while working with both DFS and OIR.

And of course there will be other issues, both state and national. The lines blur when you consider the accelerating cost of flood insurance, the evolution of lender liability for their independent contractors and the related ALTA Best Practices, the pending new closing statement (it will no longer be called a HUD-1), the fate of the GSE's, and just how will a QRM be defined.

Given all of these issues, this accelerated pace of change, we anticipate that Alex will find her mission of increasing Association membership easy to articulate. But she is but one person. We solicit your help in convincing your industry friends to join the FLTA and to participate in the health of your industry. Think of your FLTA membership as an investment in your business.

I thank you for your continuing support and know you join me in welcoming our new Executive Director.

Meet Our New Executive Director – Alexandra J. Overhoff, Esq.

Dear Friends,

I am thrilled to have taken up my duties as Executive Director of the Florida Land Title Association.

It is an honor to be a part of an association which in 2014 will celebrate its 100th year of dedicated service to Florida's land title industry. Through the flush years and the rocky years, FLTA has stayed true to its mission, constantly striving to help its members provide the public with the highest quality land title evidencing, title assurance and settlement services. To date, part of FLTA's longevity and success is due to the real partnership of a strong and engaged Board of Directors, an active and capable Executive Director, an effective and professional staff, motivated and generous volunteers, knowledgeable and interested legislators and regulators, ALTA, affiliated industry partners, and, of course, all FLTA members. I am excited to join that partnership.

My background includes lobbying in Ohio and Washington, D.C., working in various roles on several successful political campaigns, as well as being a member of Florida Chief Financial Officer Jeff Atwater's transition team in Tallahassee. My experience as a lawyer handling real estate transactions has given me invaluable insight into the title industry, as has my involvement with the Real Property, Probate and Trust Law Section of the Florida Bar.

My goal as your new Executive Director is to ensure that FLTA helps you in the Florida Land Title Industry do what you do best. I will use my skills and energy to build on the tremendous foundation laid by outgoing Executive Director Alan Fields, and to continue FLTA's positive trajectory of becoming ever more relevant to its members and all other industry stakeholders. To that end, you can count on FLTA to:

- Keep you updated on important industry news
- Provide training for you to navigate the upcoming regulatory and legislative changes, including the Data Call and ALTA's "Best Practices"
- Be a source of continuing education, compliance, training, certifications and communication
- Help you grow your business and accelerate your Profitable Leadership
- Be your representative to the public
- Help you leverage technology
- Work with our friends in affiliated industries
- Be your voice in Tallahassee

I hope to meet you at this year's Convention in Tampa November 13th through the 15th. You will hear great speakers, get a year's worth of C.E. hours, learn more about the Data Call and ALTA's Best Practices, and more, and have fun doing it!

Lastly, please consider my email (alex@flta.org) an open line of communication to let us know what FLTA is doing correctly, and what we could do better. I look forward to working with you!

Sincerely,

- Alex


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Agent Section Report
Interview with Carol Lagasse

Vincent Cassidy, Chair
Majesty Title Services, LLC

As we wind down from the summer lows (several Agents have reported a slowdown that started in July), I write this newsletter hoping that volume starts to pick up heading into the last quarter of the year. I hope by now you have heard that our incoming Agent Section Chair will be Skip Straus, principal of Enterprise Title. See Skip's Bio. Having Skip lead us is like getting a Hall of Fame Free Agent to join the team.

The annual convention is coming up fast and I encourage you to register if you haven't done so already. The location will be the same as last year, but expect a different approach. Our theme is "Profitable Leadership," and in additional to great content including relevant CE and industry leading speakers, we will hear from speakers that demonstrate leadership every day, including recently retired Major General Karl Horst;

General Horst was Chief of Staff for Centcom, the Command that manages US Military interests in the Middle East. As the saying goes, timing is everything. When I last met with General Horst, we discussed the activity in Syria and what the US approach should be. Given the turn of world events, you will not want to miss hearing the General's perspective on our Leadership role throughout the world, as well as the responsibility of leadership roles in organizations.

Like many of you, I am digesting the latest version of ALTA's Best Practices and awaiting direction on the assessment process. Be assured that FLTA is digging into this to provide you with as much clarity as possible. In fact we will be discussing this at the November Convention. I hope to present more information on the next steps regarding assessment and certification. We have been in touch with ALTA on this matter and we await lender reactions to the Best Practices and Assessments.

On behalf of all agents in FLTA, I want to thank Alan Fields for his leadership as Executive Director of FLTA these past three years. Alan had committed to lead FLTA for a few years and he actually gave us more time than expected. We were so fortunate to have someone with such a command of the industry serve as our Director. We wish Alan all the best in his new role as he joins a National Underwriter. Our new Executive Director is Alexandra Overhoff; Alex has been a lobbyist and practices law in St. Petersburg. She is already engaged in the position and will be focusing on growing membership, managing the association and coordinating our lobbying efforts. Alex is another great asset to our association.

This quarter's Agent Focus is on Carol Lagasse, President of Estate Title of St. Augustine. A veteran of our industry for over 30 years, she has seen it all. She was a member of FLTA, but left years ago when she felt it wasn't for her. She was encouraged to get engaged a few years back, and see what she has to say. Thank you, Carol, for sharing.

Interview with Carol Lagasse, Estate Title of St. Augustine

Vince: When did you start in title, and why?

Carol: I was working in a real estate office as a secretary. They were getting ready to merge their office with another and my job was being eliminated. The very next day a gentleman came into the office - he had just opened a title company and was soliciting business – on his way out he said: "you don't know anyone looking for a job do you?" – the rest is history

Vince: When did you realize this was a business you wanted to develop and grow?

Carol: The gentleman that hired me, I realized later, only had a few months experience in the business and that was researching. I had learned a lot from the folks I worked for in the real estate office (escrow accounts, deeds, mortgages) so I took on the office operations and completely fell in love with that end of the business. After a while I wanted to grow – and with my husband's urging and support – I left and opened my own company. That was 1983 and I still love what I do.

Vince: You have grown in the markets you compete - what was your strategy, how did you do it?

Carol: My strategy has and I think always will be – quality – not quantity. I rarely negotiate a price – I won't get into the pricing game. I feel what I charge is fair and the product we deliver is quality. We're the people in the same location delivering the best service we can - no matter the size of the deal.

Vince: What mistakes did you make along the way?

Carol: Our efforts to move forward with technology have been an ongoing "need to improve" area. It's just hard for me – I'm old school but I'm learning. If I want to attract the new agents who are, more often than not the younger generation, I have to dust myself off and get into the social media thing. I also don't do the "sales" thing very well. I have a person who does my marketing. I want my marketer to know the business, which she does, so she can answer questions that might come up. That was the hardest thing for me to do. I always felt like "we do a great job – that should be good enough" – but it's not.

Vince: What trends do you see developing in the agency side of our industry?

Carol: There are certainly fewer full service title agents. We perform our own searches -- for the most part, in house. I'm not a fan of online title searches – I think there's too many "quirky" things that can missed. Certainly reviewing probate files, divorce files, etc normally doesn't happen with remote title searches. That is the trend though.

Vince: Take us through a normal day in running your agency

Carol: As I said above, we do our own title searches. So first thing each morning we're organizing the files according to the order they need to be searched. I'm pulling escrow offline so we can get that balanced every single morning, we're looking at the calendar for mailaways, upcoming closings, have condo estoppels been ordered, payoffs, veys? Then all the phone calls and drop-in customers in between. It is a full day – that's for sure.

Vince: You have been active with FLTA, what made you get involved?

Carol: I belonged to FLTA early on but left as I didn't feel it was working for us "small" agents. I was invited back several years ago, and figured I'd give it a try and Wow! Was it ever different! It was truly an organization for agencies, large and small, as well as underwriters. I saw the activities and lobbying it was doing for our industry and I've been a member ever since.

Vince: Do you have any Mentors in your life that framed your life and management approach?

Carol: I have many people I look to for answers. My philosophy is that there is always someone wiser and smarter than me and I'm not afraid to ask questions. My management style – I try really hard to treat people as I want to be treated – if I can do that I'll be ok.

Vince: What would you say is remarkable about your Agency that sets you apart for the competition?

Carol: I've been doing this for 30+ years. We do our own title searches, have maps you can no longer obtain, we're in the same location with the same people and very accessible. I teach classes on title insurance and closings at the Board of Realtors® and, on occasion, at my office. I remain a resource for anyone, whether we are handling their closing or not.

Agent Section Lobby Fund

The Florida Land Title Association is unique in retaining a political consulting firm in Tallahassee specifically to advise and represent the Agents Section. The cost of these professionals is paid from voluntary contributions to the Agent Section Lobby Fund. We thank the following for their support during 2012 and 2013:

Chairman's Club ($1,000 or more)

- Alliant National
- Alpha-Omega
- Enterprise Title
- Estate Title of St Augustine
- Fidelity National Title
- First American Title
- First Service Title
- Hillsborough Title
- Majesty Title
- North American Title Company
- Old Republic National Title
- Stewart Title Co (agent sec)
- The Association of Title Agents
- Universal Land Title Co

President's Club ($500-999)

- DHI Title
- Equitable Title
- Heritage Title
- Integrity First Title
- Island Title
- Southern Title
- Sue Geigle
- Title Connection
- Ally Parker Brown

Ambassador's Club ($250-499)

- Clear Title Solutions
- Community Land Title
- Frontier Title
- M&M Title
- Treasure Title

Gold ($100 – 249)

- Master Title
- Title Company of Brevard

Alan's Bad News …and his Good News

Alan B. Fields
WFG National Title Insurance Co.

As many of you have heard, I've been offered (and accepted) a job as National Agency Counsel for WFG National Title Insurance Co. This is one of those opportunities that doesn't come around too often and was just too good an opportunity for me to pass up. I'm really excited about growing into the new role, to be part of this fast growing title insurer, and to work with some very knowledgeable and highly capable title professionals.

I've loved my job with FLTA – and the great people I've gotten to know and work with. I'm proud of all we have been able to accomplish at FLTA – by working together. So it was personally very difficult to make the decision to step down as your Executive Director and pursue this new role.

The FLTA board conducted an extensive search for my successor and hired Alexandra Overhoff, someone I think will be a worthy successor and lead FLTA to an even higher plane (There's more about Alex elsewhere in this newsletter). And I'm very grateful to WFG for allowing me several months to make a smooth and proper transition. Like all of our underwriters, they want to see FLTA succeed and prosper going forward.

So, on a personal note as I wind up my time as Executive Director, I want thank all of you for the support! What we've done with FLTA over the last few years, I couldn't have done alone – no Executive Director could have. And I'm sure you will be equally supportive of and helpful to Alex.

In looking back over the last three years – it's hard to believe it's been three years, already -- we've accomplished a great deal. And probably the most important thing we've accomplished is in demonstrating how truly effective the Florida Land Title Association and the title industry can be when we work together toward a common goal. We're in a competitive industry, and there is a natural instinct for each agent and each underwriter to try to use participation in our association and FLTA's increasing political influence to gain a competitive advantage for your own company and your own business model. Historically, FLTA has been weakest when we are fighting among ourselves. So I want to thank everyone for putting aside that natural desire, and instead working for the common good of the industry. As Jim Russick is fond of saying "FLTA is a consensus organization." Keeping that core philosophy in mind has let us successfully pursue an active legislative, judicial and regulatory agenda. [See Sidebar]

In spite of all of the legislative and regulatory accomplishments, FLTA has a lot of important work yet to do. Elsewhere in this newsletter, you will find FLTA's legislative and regulatory agenda for the coming year.

As an association, we haven't "hyped" everything we do – and with the benefit of hindsight, that may have been a mistake on my part. It's not something in my nature. But as I ride off into the proverbial sunset – I think it is important to remind all of our members of a few of the good things that FLTA has accomplished for the title industry.

When I first took the job, money was very tight. Membership in the association had declined dramatically – largely due to the crash of the housing bubble. Many of our former members had simply gone out of business. So we had to cut costs and find ways to do more with less. We've succeeded in increasing our dues revenue (without any increase in dues), and the revenue from our programs, to the point that last year FLTA was able to start rebuilding our "rainy day" fund. We're on track to be able to do the same again this year.

My first year was largely devoted to moving FLTA into the 21st Century and using technology to better serve and communicate with our members.

High Points of the FLTA Legislative Agenda 2011-2013

- "Olmstead Fix" – Passed 2011
- E-Recording Glitch Bill – Passed 2011
- Powers of Attorney -- Passed 2011
- Title Insurer Liquidation – Passed 2011
- Everglades Electric Fix Passed 2011
- Fix for Transferee Tax Liability – Passed 2012
- Data Call Bill -- Passed 2012
- Payoff Information for Subsequent Owners – Passed 2012
- Foreclosure Reform to include finality for a good faith purchaser. – Passed 2013
- Hidden Liens -- Passed 2013
- Land Trust Fix – Passed 2013

Responses To Other Bills

- Bill to exclude government interests from MRTA – Died 2013
- Bill to restrict use of credit report or background check for employment purposes. Died 2013
- Stormwater Protection fees as super-priority liens. Died 2013
- Elimination of employer credit for premium tax. Died 2013
- Fought Deregulation of surveyors and elimination of the minimum technical standards. Died 2011

We implemented an association management system integrating our membership functions, member directories, event registration, and other key functions of being an association – right into our website.

We added a lot of valuable and useful content to our website and turned it into a "destination." Since the new website went live in June 2011, we have averaged 1,728 visits a month, who visited an average of 5½ web pages (not counting bulletins and pdfs), and stayed an average of 4:38 minutes. The number of visitors has continued to trend upward, and on one day in July 2013, we had over 1000 visits to the website. These are VERY respectable numbers for the website of a small association.

Since we opened the new website, we've continued to add resources and content to the website – about FLTA and our committees, resources for search and examination, tracking legislative and government affairs, guides on how to get refunds of your condo and HOA estoppel fees, Doc stamp and intangible tax rules, links for C.E., and a host of other things we hope our members continue to find valuable. We added so much, I was having trouble finding things that I knew I had posted – so we're in the process of redoing it all to make it more intuitive and easier to find what you are looking for – including a google search at the bottom of each page. If you haven't yet, I encourage you to take a few minutes to explore our "New and Improved" website, even if it is still under construction.

In that first year, we added the technology to help our committees function better – conference call lines, a webinar service, online polling and meeting scheduling. Once we got the basic "tools" in place, we shifted our focus to improving value for our members (without losing sight of the core mission of protecting agents and underwriters from the uncertainties of Tallahassee government. We now have the tools and infrastructure in place to support an even larger organization.

We moved to an electronic newsletter and added more substantive (and hopefully interesting) articles; we added color; we added pictures. We increased the frequency of our communications, averaging two or more bulletins a month over the last three years. And we've added other informal communications regarding things that don't rise to the level of being a "Bulletin."

We updated the "Treaty" to better deal with foreclosed properties and we finally got the 2006 policy forms approved (in 2011). FLTA's forms committee continues to work on getting additional endorsements reviewed and adopted in Florida.

Our members told us there was value in education, so we increased the hours of continuing education we offered at the annual convention. We offered C.E. at various zone meetings (which didn't prove as popular). Then, in June of 2012, we kicked off a program of "For Credit" webinars and have offered them roughly every other month since. These have proven to be hugely popular – 197 registered for the Treaty Webinar, 211 for Homestead III. These webinars are qualified for both D.F.S. title agent C.E. and Florida Bar CLE credit, and we make them available FREE to all FLTA members (and employees of our members). Some members have actually been using them as group training opportunities for their unlicensed employees – who don't need DFS credit.

We tried to make our convention more FUN! Robin Cardella, our Convention Chair, led us to new heights last year in terms of energy, enthusiasm, dancing, great content and just plain fun. Our attendance was up by almost 100 over the prior year's convention – and we hope to top that at this year's convention. So if you haven't registered yet, click here. If you have, start calling your friends, they won't want to miss out on what our incoming President, Vince Cassidy has planned.

FLTA has added a lot of programs, activities, communication and visibility over these three years – without losing site of our core mission of protecting the title industry in Tallahassee through effective advocacy. During that period we've increased our visibility and political influence, and as noted in the sidebar, have had a pro-active and successful legislative agenda. We've also increased FLTA's involvement in filing Amicus briefs with the court. We only address a small number of cases, but have been rather effective in influencing outcomes. Our "Lobby Days," where a group of agents travels to Tallahassee for meetings with our legislators has grown each year, and is a lot of fun for those who participate.

FLTA helps coordinate the messages of the Title Lobby Team. Our industry has a highly regarded group of lobbyists who represent the various underwriters, a large agency and the Agent's Section of FLTA. FLTA is the only title association in the nation which maintains a separate lobbyist specifically to represent the sometimes unique interests of our Agent's Section. This is funded through your generous contributions to the "Agent Section Lobby Fund."

Well thought out positions, an impressive and well-regarded lobby team, and a lot of hard work by FLTA members are each critical to our success in Tallahassee. But, as distasteful as is may seem, it also takes money. That's where the Title Industry of Florida P.A.C. comes in. A portion of your dues (unless you opt out) is devoted to the PAC. The PAC gives us some resources to make contributions to the key legislators who influence and understand our concerns and issues. Supporting our friends in their campaigns is important to our mission, but frankly given our size, the impact is limited.

Shelley Stewart has led a hugely successful program to gather and make "Leadership Fund" contributions over and above the PAC. Between the PAC and what Shelley has done (almost single-handedly) to generate leadership contributions, the title industry is a very small player in the Tallahassee money game.

Serving as your Executive Director has been my honor and a privilege. Tracking and coordinating all the moving parts is a much harder job than I ever imagined – and I've loved it! The most important message I have given Alex, as she steps into a great job, is that the successes and accomplishments of the Florida Land Title Association are primarily through the hard work and support of our members. No Executive Director can do it alone! I couldn't have accomplished a fraction of this without the support of the board, our active committees and our members. And I thank each and every one of you for that support and encourage you to actively support Alex as she takes FLTA to even greater heights in the years ahead.

As for me – well, you're not rid of me yet. My role may be changing, but I will continue to be involved in the title industry. More importantly, I hope to continue to be involved with the Florida Land Title Association and the Real Property Section of the Bar for many years to come.

My thanks to all of you for giving me this opportunity and making this one of my favorite jobs ever!

-Alan

Now that the transistion is finished with FLTA, Alan can be reached at 813-421-3821 or afields@wfgnationaltitle.com. Please stay in touch.

2014 Legislative and Regulatory Agenda

At the July 18 Summer Board meeting, our Executive Director, Alan Fields, proposed the following Active Legislative and Government Affairs agenda for 2014. This is in addition to our "responsive" legislative agenda. Every year, bills are filed that intentionally or inadvertently will impact our industry and our business practices. FLTA will continue to monitor and respond to those, but these are the changes we want to see made for the good of our industry.

With the exception of the completion of the implementation of the Data Call (which has been previously discussed extensively and approved), each of these projects are in early stages. Drafts will be shared widely and discussed before they start to move. At the end of this article, we will be inviting our members to actively participate in any projects they find interesting. Some of these projects may take more than one year to complete, and ultimately, the final version of each project (if it gets that far) will come back for board approval.

With that background, FLTA's Legislative and Government Affairs Agenda going into 2014 included the following:

- **Complete implementation of Data Call**
  - OIR Approval – The Final Workshop has been held and the draft approved by Kevin McCardy, the Insurance Commissioner.
  - FLTA will be coordinating the lobbying through ombudsman and Governor's regulatory review staff to express our support, and the final rules are on the agenda for submission to the Governor and Cabinet on September 24. During the next Legislative Session, the rule will be submitted for Legislative ratification.
  - Between now and the first of the year, FLTA will be rolling out training and materials to assist FLTA members on how to best implement the Data Call
- **Unlawful Inducement Rule**. During 2010, FLTA worked with the DFS and developed several drafts of a rule to clarify the boundaries of permissible unlawful inducements under Florida Law. We had a draft rule, that still needs some work. Following the anti-regulation view of Gov. Scott, the project was shelved. More about this project can be found HERE. The environment for this type of rule has changed and it is now time to consider whether we want to reinvigorate this project.

  There is a feeling that (a) greater clarity was necessary as to what is and is not permitted in the way of marketing, (b) that some of the Facebook and Linked-In questions as pertains to unlawful inducements were troubling; and (c) that this rule might be an opportunity to prohibit title agents from fronting costs, paying for title searches, municipal lien searches, surveys and Condo/HOA estoppels as such costs are regularly fronted as a means of inducing business and referrals from Realtors.
- **Rate Simplification.** Several years ago, FLTA appointed subcommittees to start redrafting the title insurance rate rule to create a simpler, more easily followed rate structure. This was placed on hold due to our need to devote resources to development of the data call rule and to concern about resetting rates without benefit of the data call results. It is now time to start this project moving again (leaving specific rates as TBD items) so that we can build the necessary consensus as to the exact language and a workable structure of rates.
- **Rule Redraft for Clarification & Forms Approval.** Under the current Florida title rule, the exact language of many endorsements is set forth verbatim. While we have been successful in getting variations on these forms approved notwithstanding the language in the rule, no-one is really happy with that lurking conflict. There is also a desire to simplify the setting of rates on new endorsement forms without requiring detailed actuarial justification (which is impossible on a new form anyway). A committee has already begun working with OIR on redrafting those portions of the title insurance rule.
- **Economic Loss Rule Legislation & Litigation**. The Florida Supreme Court recently reversed itself and narrowed the "economic loss rule" to cases involving product liability claims. This ruling, in the context of a claim against a P&C insurance agency, leaves title insurers and agents open to negligence claims in excess of policy limits and potentially even as to matters excluded from policy coverage. FLTA has started laying the groundwork for a two prong response to this case: First, the claims committee has begun tracking cases addressing negligence claims as an adjunct to a title claim and sharing thoughts on the best defenses to be put forward. Separately, an *ad hoc*

committee, chaired by Ted Conner has started work on a possible legislative response. A copy of their working draft and summary is attached.

- **Oppose Elimination of Premium Tax Credit.** Florida law has long allowed a tax credit against premium tax equal to 15% of qualified salaries of Florida based insurance company employees. Last session, Sen. Joe Negron proposed eliminating this credit as a means of funding a reduction in the charge for renewing car license tags. The bill passed in the Senate, was removed in the House, then the Senate stuck the premium tax provision in another insurance-related bill (HB 635) that included many provisions which insurers and the title industry supported. We joined many other lines of insurance in lobbying against this provision. Because of this provision, neither bill passed during the 2013 session. Senator Negron is a powerful leader in the Senate, expected by many to rise to be Senate President, so we would expect to see this proposal again next year.

Developing cogent, well-drafted, well-thought-out legislation and regulatory proposals is a lot of work. Doing it well requires input from many different perspectives – agents, underwriters, attorney-agents and our regulators each play active roles in each of these projects. At FLTA, we always welcome the thoughts, ideas and active participation of any of our members. If you are interested in becoming more involved in any of these projects (or others) please contact our new Executive Director. Alex Overhoff.

Examine This! What is this Chapter 159 Exception All About?

John N. Redding, Esq.
Redding & Associates, Tampa

Have you ever seen an exception that reads something like this?

> Any lien provided by County Ordinance or by Chapter 159, Fla. Stat., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.

Sure you have! All of us have either placed this on a commitment or had the distinct pleasure of dealing with some attorney demanding it be removed. To those of you that have had to deal with me, let me just apologize right now. But do you know what this is? And how it should be removed? Hopefully I can answer this without taking up too much space.

Chapter 159 is known as the "Revenue Bond Act of 1953." The Revenue Bond Act of 1953 gave any county or municipality in the state the power to acquire by purchase or to construct, improve, repair, reconstruct, own, operate and maintain (for the limited purpose of this article) any waterworks systems, sewer systems, and gas systems (hereinafter "systems.") This act also gave any county or municipality the power to issue revenue bonds which are payable from earnings of the Systems to pay the cost of the building or maintaining the Systems. Those bonds are payable based on the service charges remitted for the use of the Systems where the funding for construction was provided by these bonds.

Okay, so the city or county used these bonds to fund the construction of the sewer system. Why do we take exception to this? Under §159.17 Fla. Stat., any municipality issuing these revenue bonds has a lien on all lands served by any water system, sewer system or gas system for the service charges relating to the financed facilities until paid. In order to make the bonds more marketable, these liens are superior to all other liens except the lien of state, county and municipal taxes and shall be on a parity with the lien of such state, county and municipal taxes. Here's the tricky part, these liens, if delinquent for more than thirty (30) days, may be foreclosed by such municipality just like a mortgage.

So, the 1953 Bond Act creates a lien on all properties served by the Systems for all their service charges until paid and provides for the foreclosure of any delinquent liens.

I have a lien search and it shows everything is paid so I can delete this exception, right? And I have a Seller's Affidavit that I can rely on too, right? Well, not entirely. Chapter 159 liens are a moving target. True, the lien must be delinquent for more than thirty (30) days before foreclosure is possible, but let's explore the process involved. The city reads the water or gas meter every month, several days after that the meter readings get processed and turned into a bill, which is mailed out. The "due date" on that bill is some time later. Usually about the time we pay the bill for last month, the process has started all over again. A lien search is only going to tell us about the bills that may be unpaid as of a certain date, it won't tell us how much water has been used since the meter reading that led to the last bill. We know there is a timing gap in even the most diligent lien search, and are hesitant to rely on even the strongest Seller's Affidavit, because we know some troublesome home inspector has turned on every faucet and flushed every toilet, all since the last meter reading (which was before the most recently paid bill even dropped). Those fees became a lien when the tap was turned on, not when they became 30 days delinquent. The risk factors are more manageable because an owner's policy is not insuring the priority of the fee owner merely that as of the policy date, he or she is the owner of the property. So in the owner's policy it is appropriate to qualify the exception based on your lien search by adding a paid through date. Leave the exception, but add the qualifier that "all amounts due through the bill dated ______ have been paid in full." Please note that different underwriters have different standards on this, so please consult your underwriter.

What about removing this from the mortgagee policy? The Lender is going to ask. When considering the lender's policy, we not only have our "moving target" problem, we have a second issue in that the lender's policy insures the priority of the mortgage and we've seen that Chapter 159 liens are superior to all other liens including the first mortgage. So in a worst case scenario, the mortgage holder could conceivably find itself foreclosed out for water and sewer service used before closing, but billed after. The better practice is not to delete the chapter 159 lien exception from the policy, but rather to qualify it as "paid through a date certain."

There are however, two legitimate ways to remove the exception entirely. The first is to confirm that there are no local government water, sewer or gas systems which service the property – such as a vacant lot or a home with its own well and on septic. If there are no systems, there can be no Chapter 159 lien and this can be established by a Seller's Affidavit. The other way to remove the exception is to confirm that none of the Systems that service the property were funded through these revenue bonds. In that case, the exception can also be removed. This is not an easy thing to get in writing from the local government. As always, please consult your underwriter before deleting, or agreeing to delete any exception.

I know I have just shot myself in the foot, but sometimes I have to think of what's right and not what I want. I will now step down from my soap box.

Mr. Redding is the principal of Redding & Associates, P.A. focusing on business and personal affairs, real estate matters, estate planning, probate, wills and trusts. Before returning to private practice Mr. Redding served as Associate Counsel – Underwriting for one of the nation's largest title insurance underwriters. In that capacity, he was responsible for handling underwriting and pre-claims matters, advising all direct offices and agents predominately in Florida, Georgia and Alabama. Prior to becoming an attorney, he was a highly regarded commercial title examiner, handling complex transactions.

Mr. Redding is a member of The Florida Bar's Real Property Probate and Trust Law Section and serves as a member of its Problem Studies, Real Estate Litigation, and Title Insurance Committees. He has recently authored a chapter for the Florida Bar's book on Real Estate Sales Transactions.

Flood Insurance Rates are Going Up! What are You Going to Do?

Alan B. Fields
WFG National Title Insurance Co.

For some time now, we've been hearing horror stories about how much flood insurance premiums are going up. A recent New York Times article[1] reported on individual flood insurance rates which were going to jump by tens of thousands of dollars. While increases of this magnitude are isolated, mostly affecting new purchasers, a great many Florida rates will be increasing dramatically over time. This is likely to significantly impact real estate closings and our customers, and we thought we should provide some background on these expected changes.

In June of 2012, FLTA reported on a five year extension of the NFIP and the rate increases -- which were part of the political compromise for extending the NFIP. The rate increases were to be phased-in over time (for most people), and were designed to put the NFIP on an actuarially sound footing – meaning the premiums charged would eventually accurately reflect the risk of loss. But these increases are just now starting to hit Florida policies and in some cases will be quite significant. To be in a position to discuss these issues with our Realtors® and buyers, FLTA wanted to provide some background.

History of National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created in 1968 to create a nationwide risk pool in the face of private insurers withdrawing from the flood insurance markets. The program was set up to be self-sustaining, though during times of higher-than-average claims losses, the NFIP borrows from the U.S. Treasury. For the most part, it worked well, with any monies borrowed paid back to the Treasury with interest.

This changed during the 2004 Hurricane season with Charlie, Frances, Ivan, & Jeanne driving hurricane damage for the year over $50 Billion – the most costly hurricane season ever. The following year, we tripled those damage estimates with Dennis, Emily, Katrina, Rita, and Wilma. The NFIP quickly exhausted its reserves and turned to the Treasury for a loan. It suddenly found itself burdened with a debt exceeding $21 billion. Since then, the NFIP continues to operate in the red and is struggling to find ways to repay the loan and handle the regular flow of claims.

Congress has amended the NFIP from time to time: creating flood maps; making purchase of flood insurance in certain high risk areas mandatory; and adjusting coverage amounts and conditions. The mixed political support for the NFIP has been reflected in a series of extensions or continuations of the program – 17 in all -- often for only a year or two at a time. Four times, the program actually lapsed before a political compromise was reached. Many of us recall times when the lapse of this program actually halted our pending real estate transactions.

The Biggert-Waters Flood Insurance Act

In June 2012, FLTA reported on the passage of the Biggert-Waters Flood Insurance Act which extended the life of the NFIP for five years until September 30, 2017; required an increase in the reserves held by the NFIP; the development of plans to repay the loans from the Treasury, and various economic studies. The biggest changes made by this act related to updating Flood Insurance Risk Maps ("FIRM") and the premiums to be charged.

After Katrina, it was discovered that a number of heavily inundated areas were not classified as being in a special hazard zone. Suitably embarrassed, FEMA launched on an aggressive program to review, update and bring current its Flood Insurance Rate Maps (FIRM). The Biggert Waters Act provided additional funding to continue this process, and as a result of this push (and the more recent experiences with Super-Storm Sandy) additional areas are being reclassified as having higher risks for flood damage – and therefore requiring higher premiums.

Going into this remapping, many structures actually predated the initial creation of the FIRM maps. Those properties were eligible for flood insurance at "set rates" that in hindsight may have been far too low. Many people took advantage of these subsidized rates and were allowed to keep those subsidized rates (with relatively small adjustments) as FIRM maps were adopted for their neighborhoods. Properties first insured after the adoption of a FIRM map were charged rates more closely in alignment with actuarial standards, but in many cases, with the benefit of hindsight, even those rates were too low.

Rate Adjustments

From our standpoint, the most significant change brought about by the Biggert-Waters Act was the requirement that, over time, the NFIP rates be increased to actuarially sound levels. The goal was for the rates charged to actually reflect the economic risk being insured so that existing subsidies would be phased out. For reasons stated above, the larger impact will be to Pre-FIRM properties.

Congress did recognize that immediately bringing everyone's rate up to an actuarially sound level would be hugely burdensome, so limits were placed on the annual increase in premiums. Different "caps" on the amount a rate could increase were applied to different classes of property. They left many of the details of these adjustments up to the Federal Emergency Management Agency (FEMA), which recently released rules outlining rate adjustments for policy renewals on or after October 1, 2013. Under their latest announcement, the average increase in total premiums is only 10%, but the changes vary widely by category and by specific property.[2]

General Rate Adjustments.

Unless a property falls into one of the special categories below, the premium adjustments will be the following:

- V Zones (coastal high-velocity zones)
  - Post-FIRM V Zones: Premiums will increase 11%.
  - Pre-FIRM V Zones: Premiums will increase 17%.

- A Zones (non-velocity zones, which are primarily riverine zones)
  - Post-FIRM A1-A30 and AE Zones: Premiums will increase 6%.
  - Pre-FIRM AE Zones: Premiums will increase 16%
  - AO, AH, AOB, and AHB Zones (shallow flooding zones): Premiums will increase 6%.
  - Unnumbered A Zones (remote A Zones where elevations have not been determined): Premiums will increase 8%.
  - A99 Zones (approved flood mitigation projects, e.g., levees still in the course of construction) and AR Zones: Premiums will increase 9%.

- X Zones (zones outside the Special Flood Hazard Area)
  - Standard-Rated Policy: Premiums will increase 8%.
  - Preferred Risk Policy (PRP): Premiums will increase an average of 1%. This increase consists of:
    - A 19% premium increase for policies written under the PRP Eligibility Extension.
    - Less than 1% for all other PRP policies (i.e., for PRPs on buildings that are currently mapped outside the Special Flood Hazard Area)

We want to stress that even in these categories, these are averages. Individual policies may adjust at different rates.

Subsidized Rates Phased Out

NFIP rate subsidies are being phased out even more rapidly for the following categories of properties, which may see individual premium increases of up to 25% per year. Effective October 1, 2013, the NFIP will no longer allow renewals for certain Pre-FIRM buildings in a Special Flood Hazard Area (SFHA) or Zone D to receive subsidized premium rates. These properties previously received subsidized premium rates because they were built on or before December 31, 1974, or before the effective date of the initial Flood Insurance Rate Map (FIRM) published for the community. In this category, the 25% annual increase in rates ceases when the premium equals the actuarially determined rate based on their flood zone. The 25% per year adjustment cap applies to the following Pre-FIRM categories:

- Non-primary residences. The rate on non-primary residences increased 25% for renewals after January 1, 2013 (up to the actuarially determined rate based on their flood zone). They will increase an additional 25% effective January 1, 2014.
- Severe Repetitive Loss (SRL) properties consisting of 1-4 family residences.
- Properties that have incurred flood-related damage in which the cumulative amounts of NFIP flood insurance claim payments equaled or exceeded the fair market value of the property.
- Business properties.

Immediate True-Up

Several categories of property are subject to an immediate adjustment of premiums, not subject to the 25% cap. **This only applies to Pre-FIRM properties in a Special Flood Hazard Area or Zone D.** The categories being immediately adjusted to full-actuarial rates, include:

- **Purchases after July 6, 2012.** Where ownership changes by purchase after July 6, 2012 (the effective date of the Act), the premium will be adjusted to full rates at the first renewal after October 1, 2013. This will not apply to gifts, transfers of ownership, or assignments to an estate or trust in which a purchase did not take place.

- **New Policies.** Properties (even if an older structure) which are first insured after July 6, 2013 will be charged at full rates. If a policy is already in place, it will be adjusted to full rate at the first renewal after October 1, 2013.

  - **Lapsed Coverage.** If a policy lapses, any renewed coverage will be at full rates. If your policy lapsed by more than 30 days between October 4, 2012, and before October 1, 2013, it will be adjusted to full rate at the next renewal.

The rules applicable to any insurance program, much less any government insurance program are detailed and complex. At best this article provides a quick summary, which will not be applicable to every fact situation. Specific questions should be referred to your Flood Insurance Agent or attorney.

The Impact

According to FEMA, 87 percent of NFIP policyholders (1,789,559 policies) in Florida are not subsidized. These policyholders will not be affected by the new law, but may see routine annual rate increases. Two percent of all Florida NFIP policies (50,496 policies) will see immediate 25 percent increases. This includes non-primary residences, businesses, and severe repetitive loss properties. These properties will see immediate changes to their premiums.

Another 5 percent of all Florida policies (103,258 policies) cover subsidized primary residences, which will remain subsidized, unless or until:

- The property is sold (new rates will be charged to the next owner);
- The policy lapses;
- The property suffers severe, repeated flood losses; or
- A new policy is purchased.

The remaining 6 percent of Florida policies (114,894 policies) includes subsidized condominiums and non-condo multi-family structures. These policyholders will keep their subsidies until FEMA develops guidance for the removal or phase-out of these subsidized rates.

The Political Response

While it is hard to argue against flood insurance charging an actuarially sound rate. The dramatic rate adjustments, particularly those triggered by a sale, have the potential to significantly depress real estate transactions in coastal areas at a time when the market has not yet recovered fully from the last round of shocks.

In response to fears that flood insurance rates will make many homes unmarketable and dramatically reduce values, potentially damaging the already fragile real estate economy, **Sen. Mary Landrieu, D-La**., has introduced legislation that would delay flood insurance premium increases until six months after FEMA conducts an affordability study on the higher premiums.

This study is mandated under the same 2012 legislation which extended the NFIP and triggered the rate adjustments. She argues that the delay, along with the completed study, would provide Congress with the information it needs to develop a law that helps make the flood insurance program more sustainable without putting insurance out of the price range of homeowners and businesses.

She has also been attempting to add this language as an amendment to other "must pass" legislation.

Unless Congress amends this law, most flood insurance rates in Florida will go up by an average of 10% (capped at 20% increase) at their next renewal. Over 50,000 policies will immediately go up by 25% per year, and keep going up until they are actuarially sound, and over 100,000, mostly older, homes will see huge increases in premium when they are sold. In some areas, those jumps will be so great that the properties will become effectively "unsellable."

We applaud and encourage Sen. Landrieu's efforts but recognize the uphill fight she faces in delaying the impact of these often dramatic rate increases.

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[1]Outrage as Homeowners Prepare for Substantially Higher Flood Insurance Rates, New York Times, July 28, 2013. Online at: http://www.nytimes.com/2013/07/29/nyregion/overhaul-and-a-hurricane-have-flood-insurance-rates-set-for-huge-increases.html?pagewanted=all&_r=0

[2] Source: FEMA, SUMMARY OF THE NFIP OCTOBER 2013 PREMIUM RATE AND RULE CHANGES http://www.nfipiservice.com/Stakeholder/FEMA/Attachment%20A%20Summary%20of%20the%20NFIP%20October%202013%20Program%20Changes%20final.pdf

[3] Brad G. Loar, Director, Mitigation Division, FEMA Region IV presentation to the Florida Realtors - BW12 Brief

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Welcome New Members - We're so glad to have you with us!

Organization	Name	City	State
Albertelli Law	**Jennifer Roy**	Tampa	FL
Americas Title Corp	**Brian Woods**	Tampa	FL
Atlantic Coastal Land Title Co., LLC	**Jason Beal**	Vero Beach	FL
Baker Title & Escrow Co., Inc.	**Judith A. Gallups**	Macclenny	FL
Barnett Bolt Kirkwood Long & McBride	**Charles Carlson**	Tampa	FL
Bartlett Title Services LLC	**Kimberly Bartlett**	Ponte Vedra Beach	Fl
Bayview Title Services, Inc.	**David Slachter**	Fort Lauderdale	FL
Best Title Solutions, Inc.	**Stormy Gail Wilder**	Cape Coral	FL
Bivins & Hemenway, P.A.	**Lynn Langowski**	Valrico	FL
Central Alabama Title Center, LLC	**Kristi Holzimmer**	Montgomery	AL
Clear Title America, LLC	**Gary Alderman**	Tampa	FL
Corporation Service Company (CSC)	**Phil Karr**	Wilmington	DE
Cotton Land Title, LLC	**Joan Jones**	Shalimar	FL
Dependable Title Services of FL, Inc.	**Rebecca Petroske**	Melbourne	FL
Esquire Title Services, Inc.	**Christine Marie White**	Orange City	FL
FL Title Solutions, d/b/a Marketplace Title	**Joseph Taylor**	Estero	FL
Gulfshore Title Company	**Jeffrey Grant**	Naples	FL
Island Title of St. Augustine LLC	**Christina Guyette**	St. Augustine	FL
Island Title Service, Inc.	**Susan Rawlins**	Mulberry	FL
Kinetic Title Group, Inc.	**Vivienne Crawford**	Doral	FL
Leading Edge Title of Brandon, LLC	**Maryly Gonzalez-Lineman**	Brandon	FL
Medallion Analytics	**Emel Gomulka**	Pittsburgh	PA
Naumann Law, P.A.	**Nicole Naumann**	Fort Myers	FL
OIG Title & Escrow, LLC	**Rene Otero**	Tampa	FL
Olde World Title	**Miguel Lopez**	Orlando	FL
Panhandle Land Title, LLC	**Janice Sapp**	Bonifay	FL
Paradise Coast Title & Escrow, LLC	**Sam Saad**	Naples	FL
Premier Land Title	**Conrad Jakubowski**	Bonita Springs	FL
Priority Title of Florida	**Ida Williams Campbell**	Riverview	FL
RamQuest Inc.	**Erin McAnally**	Plano	TX
RELTCO, Inc.	**Paula Pautauros**	Tampa	FL
Roetzel & Andress	**Michael Yashko**	Fort Myers	FL
Statewide Land Title	**William T Jackson**	Jupiter	FL
Superior Title Ins. Agency of Marion Co	**Lucinda Lally**	Ocala	FL
The Closing Place, Inc.	**Katherine L. Tom**	Indian Harbour Bch	FL
The Compass Group	**Gary Dittman**	Ft Myers	FL
Title Solutions Agency, LLC	**Tina Tiller**	Plymouth	MI
Title Works	**Stephania R Perillo**	Destin	FL
Titlevest Agency, Inc.	**Brian Tormey**	New York	NY
Westminster Title Agency, Inc.	**Donna Tirone**	Bonita Springs	FL

2013 FLTA Convention: November 13 – 15

For the first time in FLTA history, the convention is being held at the same venue as last year's meeting. So many positive comments were shared after last year's event; we figured we'd give it another 'go'. If you attended last year and had a good time, then please be sure to sign up and join us again. If you missed it, then this is your opportunity to attend and experience all the fun that everyone else was talking about after last year's meeting. Some things will be different (such as having the CE luncheon INDOORS) and others will remain the same. We've hired the same DJ ☺

It's not solely about the FUN (darn it). We have a packed agenda to share with you. Our format has been expanded yet again, to accommodate more information, and more opportunity to share your views and ideas with others. The CE classes planned have ALL been approved by DFS for the licensed title agents, and we've applied for CLE from the Florida Bar. We actually have SIX separate classes approved; FOUR for ethics. The classes have separate approvals, so if you cannot attend all of them, you will receive credit for the ones that you complete. This means you MUST be there at the beginning of the class and stay to the end of that class for the credit to be awarded.

It's not just about the CE. Vince Cassidy, our President-elect has some great speakers lined up and has built some opportunities into the agenda for true networking and teambuilding. Vince also suggested, and the Board agreed that for the first time EVER, you MUST be an FLTA member to attend this event. If your company is a member you are eligible to join us. Registration is available through our website from the convention pages, or click HERE to go directly to the registration page. For FAQ's, full agenda, CE agenda, hotel info, location information, you should really visit the website and select the convention pages.

The dress is resort casual; the banquet is food and dancing, and very few speeches. The banquet theme is "lost in the 50's" so dig out those saddle shoes, poodle skirts, leather jackets, etc.

So, SIX CE hours (FOUR for ethics); fabulous speakers, agent and insurer section meetings, government affairs topics, networking opportunities and just good fun. If you haven't registered yet, **WHAT ARE YOU WAITING FOR?**