



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.

Greetings:

Education through Communication.

Appreciation through Understanding.

Prosperity through a Job Well Done.

We will soon embark on a new year. Let this year's upcoming journey take us to a higher level of respect and appreciation for the valuable service we provide the real estate industry. Spread the knowledge of our profession to the consumers we meet in our daily routines. I encourage you to spend just a minute or two educating your customers about the services you have performed on their behalf. If you take your services for granted, then you shouldn't be surprised if others take your services for granted. Be sure to tell the consumer the tasks you have completed to bring the real estate transaction to a successful conclusion. You say that you are not the bragging type? It's not bragging to educate others on what steps you have taken to ensure a successful closing. An ounce of bragging -- education through communication -- may yield a pound of appreciation through understanding.

Not only do we need to educate and communicate with the consumers, but we must educate our legislators. If we want laws to be passed that will improve our industry and its delivery system, it is imperative that we seek out and teach our legislators the importance of our profession. Last year, several in attendance at the FLTA Mid-Winter meeting in Tallahassee visited with many key legislators in their Capitol Building offices. Each group of FLTA members was armed with bullet points to espouse our proposed legislation and bullet points on proposed laws that would harm our industry. These brief meet-and-greet sessions were extremely successful. Therefore, we will again organize groups of FLTA Mid-Winter meeting attendees to visit with some of the legislators to apprise them and request their support for legislation to benefit the real estate industry and the consumer. The communication must not stop there; we must continue to write our legislators seeking support for our legislative bills during the law-making sessions. The Florida Land Title Association can assist you in composing letters to your congressional representatives.

And finally, in this upcoming year, FLTA will focus on educating our members on industry trends and directions. Through face-to-face town hall meetings in various areas of the state, FLTA representatives will endeavor to bring the news to you and invite your ideas and comments. Information and updates will be emailed or posted on our website throughout the year. FLTA does not want to be blind to the industry's problems, nor does FLTA want any of its members to be blindsided. The lines of communication will be a facet of our mission to be a life-line to all members trying to navigate the rough seas of our economy.

Education, communication, appreciation and understanding are building blocks of better times to come. And the most important building block is your membership in the Florida Land Title Association. Be a member. Be informed. Be concerned. Be involved. And thereby make a difference.

If you missed the convention, you missed a LOT!!
– by Linda Martin, CLC/CLS

To say that this year's convention was full of surprises would be an understatement. Our agenda this year was extremely busy and jammed with things to do from the minute the committee meetings started on Wednesday, November 3, until we adjourned on Friday, November 5 at noon.

While there is always business to be conducted, committee meetings and CE to attend and of course the installation of our new officers for the next year; the convention is also a time of celebration and an opportunity to recognize those that have given great service to the Association.

I first want to thank all our members for being really good sports and NOT saying anything to **Lee Huszagh**, our retiring **Executive Director**, to alert him to the special party we had planned for him. Over 400 people eventually knew what was in the works and the fact that his party was truly a surprise to him speaks volumes for how much he has meant to our Association. The "Thanks for the Memories" reception was a success with approximately 80-90 attendees and it was a great opportunity to say thank you to our **Lee** for his 18 years of service to the Association. During the party he was presented first with a "gag" cane pole for fishing, followed by the really spiffy rod and reel, which was imprinted with Lee's name and the FLTA info and was awarded by **Alan McCall** on behalf of the **members of our Board**.

I am sure Lee thought that party was all we had planned for him, but it was only the beginning. Throughout the convention various gifts and awards were bestowed on him. Funds for American Express Gift certificates were collected from the **Past Presidents**, **Denham Award Recipients** and **Honorary Life Members** and presented to Lee during their annual luncheon. A **Plaque of Appreciation** was presented during the banquet, as well as an **Honorary Life Membership** and a special award granted by the Board of Directors in which the **Tallahassee office** of the **Florida Land Title Association** is now known as the **Lee Huszagh office**. We did our very best to send him off to his next adventure in style.

The Board of Directors also surprised **John LaJoie** by making him the most recent **Denham Award** recipient. John is a former President of the Association, and a long time supporter of

the FLTA. The award was presented by a former Denham recipient and a recent Past President **Alan McCall**.

In addition, the Board also awarded **Honorary Life Membership** to **John Berkley** who recently retired from First American after more than 40 years in the title industry and he too, has been a dedicated supporter of the FLTA.

It was also announced at the annual banquet that **Alan Fields** had been selected to be our new **Executive Director** and the announcement was very well received by everyone in attendance. The Association is very fortunate to have found someone like Alan to step forward and take on the task of managing the FLTA. Be sure to see Alan's article in this Newsletter.

Finally, if you missed the convention, you also missed the opportunity to win an **iPad**, (32 gigs, with wi-fi and 3G) which was the **drawing prize** this year if you took the time to take your game piece to all 16 of our exhibitors and hear what they had to say about their products. Over 35 convention attendees managed to complete the marathon and visited all 16 exhibitors. The iPad, was won by **Lou Guttmann**.

Elsewhere in the newsletter you will find reports by Section Leaders and Committee Chairs about the various activities that took place during their meetings at this year's convention. If you didn't attend, you also missed the opportunity to receive 3 CE hours both as a title agent and as an attorney.

Next year's convention will be at the **PGA National Resort & Spa** in **Palm Beach Gardens** from **November 2 – 4**. Please put it on your calendar and do your best to attend. You miss a LOT when you don't!

Meet our new Executive Director – Alan B. Fields, Esq.

Those who weren't able to attend this year's FLTA convention may not have heard that Alan Fields was selected as our new executive director. Many of us have known Alan for years – as he was the highly regarded State Counsel for First American Title Insurance Company. Others knew him as a first rate business and real estate attorney. But few know the depth or extent of his title industry experience.

As a teen-ager, Alan started work in the industry as a law clerk for in Lake Placid, running to the court house and examining abstracts (not knowing that his boss had already examined the same abstract for a prior transaction). He continued to do that through the last two years of high school and during breaks from attending Davidson College in North Carolina. **Bert J. Harris, III**, one of the attorneys for whom Alan clerked, says: "He was scary smart then too."

Recognizing his innate talent in real estate, arrangements were made for Alan to spend time working with former FLTA President, **John Haviland** to learn the inner workings of a title plant, and to spend several months working on a survey crew in order to better understand the value and limitations of the survey process.

After graduation from Davidson, Alan received a scholarship to Florida State University College of Law, where he graduated first in his class and served as Editor in Chief of the Law Review.

Even then, Alan's academic inclinations leaned toward real estate law. As a clerk for one of his professors, he did extensive research on the applicability of the Marketable Record Title Act to sovereignty submerged lands, and helped brief the Florida Cattlemen and the Land Council on these issues. The University of Florida law review article he co-authored proposed a legislative solution to the uncertainties created by the Coastal Petroleum case (holding that MRTA does not affect the state's ownership of sovereignty submerged lands).

The Real Property, Probate and Trust Law Section of the Florida Bar (RPPTL) liked Alan's proposal and caused Alan's bill to be introduced in the Legislature. This ultimately became §253.12(9) and (10), which put an end to some major claims exposure and brought a degree of certainty to this area of the law.

For at least the last 15 years, Alan has taught the course on waterfront property rights to those attorneys seeking to become board certified in real estate. He has also taught Continuing Legal Education and Title Agent Continuing Ed courses, and guest lectured at several Florida law schools on innumerable other real estate topics.

Alan became one of the (then) youngest members of the RPPTL Executive Council and served on a number of its substantive law committees – further honing his technical legal skills. He has been involved in the drafting of quite a few statutes which affect us every day. He currently serves as the vice-chair of RPPTL's real estate legislation committee and until assuming his new role, had volunteered his time as chair of the FLTA Government Affairs and Judiciary Committee.

Lee Huszagh said: "I think Alan Fields is, by far, the most capable candidate to serve our Association as the new Executive Director. He has all the tools to hit the ground running for a smooth transition. I am proud to call Alan my friend and pledge to assist him in any way I can."

When not donating his time so generously, Alan represented a major citrus company, several land developers, a long distance telephone conglomerate, has been an officer of a merchant bank group, and run a public company. In the real estate world, he has been a runner, an examiner, an attorney-title agent, the owner of a real estate company with 42 Realtors® and the State Counsel for First American Title Insurance Company in Florida.

According to **Jim Russick**, who served on the FLTA selection committee for the new Executive Director, "we couldn't have designed a better set of professional, title and governmental experiences to prepare someone for this role. More importantly, Alan shared our vision of where the title industry and FLTA should go."

Did you know that **17%** of all paid off mortgages are never released or recorded?

Did you know that **36%** of all real estate transactions have some type of lien release clean up that must be done prior to closing?

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The 2010 Scholarship Report

Once again it's that happy time of year when the FLTA has the opportunity to help some very deserving students further their education goals by awarding our scholarships. This is a rough committee to be on, as while we have 3 scholarships to award, we only have 3 and that means someone will be disappointed.

The recipient of the **Sam D Mansfield** Scholarship is **Benjamin Davids**, the son of Debra Davids of Old Republic National Title in Maitland. Benjamin is currently enrolled at the University of Florida with a GPA of 4.50 and is interested in becoming a Veterinarian.

The recipient of the **Marjorie S Schwartz** Scholarship is **Katherine Behel**, the daughter of Connie Clark of Attorney's Title Insurance Fund in Orlando. Katherine is also enrolled at the University of Florida with a 4.6 GPA and is taking psychology classes for her pre-med studies.

And

The recipient of the **John S. Thornton, Jr** Scholarship is **Daniel A Dennis** the son of Suzann Dennis of Equitable Title in Orlando. Daniel is enrolled at the University of South Florida and has a 3.5 GPA. He is studying Biomedical Sciences and Biophysics Research.

CONGRATULATIONS TO ALL OF YOU!!

AND THANK YOU TO OLD REPUBLIC NATIONAL TITLE

We would be remiss if we did not mention our friends at Old Republic National Title who have consistently funded the John S. Thornton, Jr. Scholarship since its inception. We just can't thank you enough for continuing to be a part of this important program.

The Agent Section Report – by Beverly McReynolds, CLC – Section Chair

The Agent Section welcomes our new Executive Director, Alan Fields. We want to thank Lee for his many years of service and wish him a very happy retirement. *May the fish always be biting!*

We were pleased to see so many agents at our Annual Convention in Ponte Vedra Beach at the beginning of November. We added two agent focused sessions to the Agenda this year. Bright and early on Thursday morning, **John Clark of Old Republic Title** gave a very informative presentation on HAMP and HAFA that was approved for CE credit. The session was very informative and timely. I want to thank John and Old Republic Title for making this possible.

Later in the day, during the Agent Section meeting, **Laura Woodard, President of Grass Roots Marketing** addressed the group on "Well Tended Marketing Strategies". We cannot

focus too much on sales and marketing during this real estate downturn. Her presentation was sponsored by North American Title Insurance Company and we thank Laura and North American for providing us with this important information.

Julie Myers of Smith, Bryan and Myers, our Agent Section lobbyist attended the Convention again this year. She gave a report to the Governmental Affairs Committee explaining how the recent elections may affect our Industry. She has helped all of our members to focus on the importance of making our legislators aware of the services that the title industry performs for the citizens of the State of Florida and our local municipalities.

After all, we are the ones that maintain an efficient closing delivery system for the people of Florida. In addition, we collect millions of dollars in outstanding taxes, liens and assessments for the cities in which we do business.

The Agent Section meeting was well attended and many important topics were discussed. Excerpts from the minutes of the meeting follow below.

Beverly McReynolds brought the group up to date on the latest changes to the DFS Proposed Unlawful Inducement Rule. A motion was made, seconded and passed that the Agent Section will oppose this Rule as written unless the OIR adopts an identical and simultaneous Rule so as to create a level playing field in the marketplace.

A report was given that the DFS is not targeting the title industry with its Use of Designation Rule and therefore, this Section would like to see language that would exclude our industry from the Rule.

Alan Fields and **Ted Connor** requested that the group give their consensus of opinion on various provisions of the proposed HB 637 that they are drafting for the industry. We discussed the rebating provision and the Section wants to see the language remain as it is currently drawn with a complete prohibition on rebating. The Bill eliminates the possibility of earning interest on escrow accounts. This was a recommendation of the Study Advisory Council and a request of the DFS. Nonetheless, there was not a consensus of support for this provision. This Section supports the concept of an "Agent in Charge" at each office location of an agency. There were questions as to how this would apply to underwriter direct shops and it was felt that the Bill needs to include language that would require the same for underwriter direct shops. The Guarantee Fund was brought up but the group felt that this would be a decision left to the underwriters.

The topic of Surety Bonds came up and it was announced that the DFS would like to do away with this requirement. We also talked about the difficulty some agents are having in obtaining the bond. The names of two companies that are currently writing surety bonds at reasonable rates were circulated.

The topic of market conditions and the REO market was briefly raised and the comments from the panel discussion by the big four underwriters that took place during the ALTA convention were circulated. Comments were also made about the questionnaires being required to be completed by certain underwriters prior to insuring REO properties and the difficulties with same. We are being asked in the questionnaire if we have reason to believe that there would be anything wrong with the foreclosure on the property in question. If you

have read a newspaper, you would have a hard time responding in the desired manner to that question.

A copy of the new FARBAR contract was circulated and it was noted that the language regarding good funds for closing has been amended. It should help to protect closing agents going forward when this contract is used.

It was reported that we are currently in good shape with our lobbyist fund but that additional pledges will be needed before the end of the contract.

Norwood Gay made a presentation regarding the NAIC Data Call. *[ed- and wrote an article on the topic for this newsletter]* While there was not time to discuss the form in detail, he made a very important point: Florida has the right to use this form as a basis for its data call and make amendments to it. He suggested that we use this as an opportunity to include the cost of preventing claims in the overall cost of claims. This would make our data look more like that of other lines of insurance and help our regulators better understand our numbers. Rather than start this effort from scratch, ALTA already has a committee working on a similar concept and we should work in tandem with that committee. The best solution would be to build this concept into our Bill. This was made into a motion, seconded and passed and will be a recommendation to the Insurer Section and to the Board of Directors.

Vince Cassidy suggested that the FLTA prepare a press release announcing our new Executive Director and our new initiatives. We also discussed the idea that a PR person could help us grow our membership.

Julie Myers suggested that a SWAT Team be created for the purpose of addressing our legislators as needed. It should consist of both agents and underwriters. At times, our lobbyists need an industry person to be able to explain a concept to a legislator at a moments notice. If we have a team of industry professionals who are prepared to assist with this, it will help our lobbyists help us. This was also made into a motion, seconded and passed as a recommendation. **Jeannie Germain, JoAnne Quarles** and **Gibbs Wilson** offered to serve on this team.

Julie Myers will again be forwarding to this Section any legislation that is proposed during session that she feels would affect us for our review and comment. **Skip Strauss, Shelley Stewart, Rosa Peck, Sue Geigle** and **Norwood Gay** volunteered to serve on this legislative review committee.

We look forward to seeing you at the Winter Meetings in February in Tallahassee. We will spend a day at the Capitol with our legislators making sure they understand the importance of our industry. This is our opportunity to make our voices heard! Please make attendance of this meeting your priority!

*Editor's note: When people ask you why they should join the FLTA what better example can we give them than to demonstrate ALL the things we try to accomplish on behalf of our industry **AND***

It should also be noted that Beverly's underwriter, North American Title paid the fee for Ms. Woodard's presentation.

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Technology provided by PropertyInfo Corporation, a Stewart company.



2011 Upcoming Events

February 8, 9 & 10 (tentative) – Mid Winter meetings, Tallahassee, FL

Plans are underway for this year's Mid-Winter meetings which we are tentatively calling "Legislative Days" and have selected the above dates as the most likely dates to use that will give us the best opportunity to meet with our legislators. We will be posting more details to the web and circulating email messages for this event soon.

2011 Membership Dues notices

One of the few items we mail each year is the annual dues notice. We are processing the notices for delivery by mid December, so if you paid dues last year, you should have your notice for 2011 by then. If for some reason you don't receive it, please contact Linda Martin by email at Linda@flta.org

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.

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.

American Guardian Title, Inc

Debbie Ferraro
Tampa, FL

Marlin Title, LLC

Peter Christiano
Safety Harbor, FL

Express Title Services of Citrus, Inc

Kelley Paul
Crystal River, FL

Gulf Atlantic Title & Appraisal, Inc

Dawn A Wiser
Tampa, FL

One-Step Lien Search, LLC

Morayma Ramos
Miami, FL

Prince A Donnahoe IV, PA

Prince A Donnahoe IV, Esq
Cooper City, FL

Total Title Solutions

Abe Moussa
Clearwater, FL

University Title Services, LLC

Cassandra Grassman
Lakewood Ranch, FL

Vesta Title Corp

Deborah Harden
Homosassa, FL

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. 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 associate dues", too. They show up at our meetings and conventions, PAY for the privilege of having a spot to display 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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Giving THANKS for Our Property Rights

As an Association, our stated goals include educating Florida consumers, legislators and regulators about real property rights. In keeping with that goal, I wanted to share an interesting article from our friends at the **Coalition for Property Rights**. Even though this article discusses a time before there was a title insurance industry, it gives a uniquely American, historical perspective on the fundamental importance of private property rights to a thriving economy and important role we play in protecting and assuring those property rights in today's larger, more complex economy.

HOW PROPERTY RIGHTS SAVED THE PILGRIMS:

By Carol Saviak
Coalition for Property Rights

The first British settlers of America arrived in Jamestown, Virginia, in May of 1607. There, in the Virginia Tidewater region, they found incredibly fertile soil and a cornucopia of seafood, wild game, and fruits of all kind.

Within six months, all but 38 of the original 104 Jamestown settlers were dead, most having succumbed to famine.

Two years later, the Virginia Company sent 500 more settlers, and within six months 440 had died of starvation or disease. This was known as “the starving time” (See Warren Billings, ed., [*The Old Dominion in the Seventeenth Century: A Documentary History of Virginia, 1606-1689*](#)).

In his excellent book, [*The Noblest Triumph: Property and Prosperity through the Ages*](#), Tom Bethell cites an eyewitness to the starving time who diagnosed the cause, in old English, as “want of providence, industrie and government, and not the bareness and defect of the Countrie, as is generally supposed.”

The reason for this “want” of “industrie,” as Philip A. Bruce noted in his [*Economic History of Virginia in the Seventeenth Century*](#), was that “The settlers did not have even a modified interest in the soil. . . . Everything produced by them went into the store, in which they had no proprietorship.” That is, there were no well established property rights; the first British settlers practiced agricultural socialism and, like socialism everywhere, it was an unmitigated disaster.

The primary problem was that all of the men were effectively indentured servants who had no personal financial stake in the fruits of their own labor.

For seven years, all that they produced was to go into a common pool to be used, supposedly, to support the colony and to generate profits for the Virginia Company.

Working harder or longer provided them with no rewards - or no reward different than those who did not work, so many shirked - and starved.

Bethell recounts how, in 1611, the British government sent Sir Thomas Dale to serve as “high marshal” of the colony. He immediately diagnosed the problem as the absence of property

rights in the land, and subsequently determined that each man would be given three acres of land and be required to work no more than one month per year to contribute to the colony, i.e., to pay taxes. There was a clear recognition of how important that ownership component was in motivating labor.

Once private property was established the colony began immediately to prosper. Bethell cites historian Mathew Paige Andrews, author of [Virginia: The Old Dominion](#), as saying: “As soon as the settlers were thrown upon their own resources, and each freeman had acquired the right of owning property, the colonists quickly developed what became the distinguishing characteristic of Americans - an aptitude for all kinds of craftsmanship coupled with an innate genius for experimentation and invention.”

The Indians, who had previously looked down upon the settlers as incompetents, began trading furs and other items for the corn that was being harvested by the settlers.

In their [History of the American Economy](#), Gary Walton and Hugh Rockoff note that “A second and more significant step toward private property came in 1618 with the establishment of the headright system.” Under this system, “any settler who paid his own way to Virginia was given 50 acres and another 50 acres for anyone else whose transportation he paid. In 1623 - only 16 years after the first Jamestown settlers had arrived - all landholdings were converted to private ownership.”

The second British colony in Plymouth, Massachusetts, was established in 1620. Incredibly, the Mayflower investors failed to learn the lessons of the earlier Jamestown settlement and repeated its early disaster. Establishing the same kind of "common pool" arrangement that led to starvation among the Jamestown settlers, about half of the 101 people who arrived on Cape Cod in November of 1620 were dead within a few months.

The governor of the colony, William Bradford, eventually recognized the problem as the absence of property rights. In his now-famous passage on private property from [Of Plymouth Plantation](#) Bradford wrote of how he determined that the Pilgrims should set corn every man for his own particular, and in that regard trust to themselves And so assigned to every family a parcel of land, for present use This had very good success, for it made all hands very industrious, so as much more corn was planted than otherwise would have been by any means the Governor or any other could use.

Bradford was a highly educated man, and pinpointed the source of evil as “that conceit of Plato's,” i.e., the Greek philosopher's attack on private property, an idea that Aristotle refuted. Those who believed in communal property, wrote Bradford, were deluding themselves into thinking they were “wiser than God.”

The Plymouth and Jamestown colonies were both founded as communal settlements with collective interest economies in which every worker received equal benefit, regardless of individual labor or output. In other words, the colonists initially, “spread the wealth.” It did not work.

Once private property was established the colonies thrived as no other nation had before them. New Englanders became successful trappers, farmers, fishermen, and ship builders. The southern colonies excelled at growing cotton, rice, wheat and other grains, indigo, corn,

and especially tobacco. By 1775 the American economy was ten times larger than it had been in 1690 and a hundred times larger than it was in 1630.

It is not an exaggeration to say that the key to the very survival of the Jamestown and Plymouth pilgrims was their establishment of the cornerstone of capitalism: private property. From that, all the blessings flowed for which they gave thanks to the Lord.

The holidays are a wonderful time to not only reflect upon our core values but to recognize the responsibility we have to discuss our key values at the dining table, at the water cooler and wherever an unexpected opportunity may be to share factual information with family, friends and colleagues [Ed – and the import role of title insurance agents in assuring compliance with the transfer process and providing the economic backstop so critical to the functioning of our modern financial system]. Our nation is at a critical tipping point and these quiet conversations are critical to the work of returning our nation to prosperity. Property rights and individual industry are the backbone of our American economy and the key to economic prosperity.

For further information, you are referred to: *Tom Bethell of the Hoover Institution – “How Property Rights Saved the Pilgrims,”* which can be viewed at <http://www.hoover.org/publications/digest/3507051.html>. (A pdf copy is available at <http://www.proprights.com/uploads/PilgrimsBETHELL.pdf>)

Our thanks to Carol and the CPR for their permission to adapt and reprint this article.

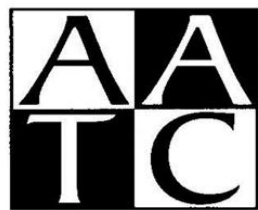
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Current Status of NAIC Title Agent Statistical Plan – by Norwood Gay, Esq.

The NAIC has adopted its version of a model title agent data call. The questions and specific instructions for the NAIC's data call can be found on its website. Attorney agents have different instructions than non-attorney agents and regulators, to some extent, recognize the differences in business practices. One of the difficulties faced by attorney agents is allocation of expenses between title insurance and closings, and the practice of law. Although not yet clearly stated in the specific instructions, it would appear that the NAIC is thinking along the lines of allocating expenses based on the ratio of law practice income to title insurance and closings income. It has been pointed out that this is not an altogether satisfactory solution, introducing some skewing of attorney agent data, but one could argue that such data skewing would be minimal and having the data contributes to the ultimate purpose of the data call more than it detracts. Non-lawyer title agencies, of course, will not have such data skewing to contend with. In Florida, the entire issue of attorney agent data skewing may well be moot because of the ruling of the First District Court of Appeals in the Keys Title case in 1999, in which the court said attorney agents were not required to submit information for a data call attempted by the former Insurance Commissioner.

Florida regulators participated in the data call discussions. The NAIC continues to work on developing implementation tips. A survey of states was taken to determine if they need to take legislative or regulatory action to adopt the data call. Florida now says it has the requisite regulatory authority. States were also asked if they would likely adopt a data call using the format now approved by the NAIC Working Group. Twelve states indicated an interest – not exactly an overwhelming showing of support. Under NAIC rules, this modest response precludes the drafting and adoption of a Model Act for an Agent Statistical Plan.

ALTA is encouraging state land title associations to develop a strategy to engage with their regulators so that any changes the industry seeks will be included in the state's plan. FLTA needs to stay with this issue in case our regulators do indeed decide to go forward with developing their own statistical report. Perhaps the most important area of focus will be in the instructions for completing the report by the agent.

Two significant outstanding issues: whether the state can keep collected information confidential and whether the state will exempt smaller agents from reporting requirements.

A final note: the Statistical Plan fails utterly to capture the risk reduction expense that goes into every title policy issued, thus making it appear that there is a gross overcharge for title insurance. When the uninformed (by us) public compares claims paid ratios between title insurance and casualty insurance, they see that title only pays out 7-10% of its premiums in "claims" while casualty insurance pays out something like 70-75% of its premiums in claims. This is entirely attributable to the fact that we do not capture the rest of the expenses we incur in dealing with claims in the title industry. Such things as search, exam, curing title defects, paying taxes and the like should be considered claims expense in title insurance. Doing just that would make title insurance claims expense ratios comparable with casualty insurance claims expense ratios on an equal basis, showing the value of the title insurance product and showing the consumer that he is receiving value for his premium payment. We need to begin educating our regulators on the vital importance of making this adjustment to the methodology of data gathering for title insurance, setting us on equal footing with the rest of the insurance industry.

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We would like to extend a special thank you to our members that have taken the time to update their ad formats (including working with a novice in the publishing arena) and paid for the privilege of having a black and white ad included in this edition of our quarterly newsletter. We so appreciate your continued support of our Association.

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

And we'd also like to thank...

FLTA has been very fortunate this year. Many of our members have come to our rescue on a number of occasions to sponsor specific elements of an event or an item that we needed addressed. Since the last Newsletter, we have even more things to be thankful for.

First, we need to give a HUGE thank you to **WFG National Title** for a \$1000 contribution and to **North American Title** for a \$2500 contribution to our TIFPAC fund. As most of you may remember there is an option on your dues notice to allow a portion of your annual dues to be designated for contribution to TIFPAC. WFG and North American have done more than that by making additional contributions.

We would also like to thank **Stewart Title Guarantee** for the purchase of our new FLTA table covers. We've been attending more events this year and the suggestion was made that we really needed covers with our FLTA logo on them for these events. Stewart Title graciously agreed to reimburse the FLTA for the cost of the covers once the right ones were selected, priced and ordered.

The FLTA office is getting a face-lift of sorts. We'll be doing a little painting and sprucing up and when our new President, Pat Hancock visited our office recently, she set the wheels in motion for **Fidelity National Title** to donate updated furniture to go with our new paint.



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

The FLTA Governmental Affairs and Judiciary Committee met on November 3, 2010 under the able chairmanship of Alan Fields. The meeting was well attended and enjoyed the active participation of many FLTA members.

The meeting began with a general update and report of various governmental affairs activities of FLTA since the last committee meeting. These included the following:

- DFS Proposed Rule on Unlawful Inducements. FLTA continues to provide advice and counsel to the Dept. of Financial Services regarding identification of permitted and impermissible marketing activities. DFS has indicated a willingness to consider FLTA's comments. FLTA was represented at a hearing in Tallahassee on November 15, 2010 and the DFS seemed very receptive to our suggestions for changes to the draft language. Another draft, incorporating recommendations, is expected shortly.
- DFS Proposed Rule on Designations. The Department of Financial Services has begun rulemaking to extend guidance and set forth standards in the use of professional designations or certifications by licensees engaged in the marketing and sale of insurance products. FLTA is participating in discussions on the topic.
- Update on Chapter 637 Project – Ted Conner/Jim Russick. Legislation to implement the recommendations of the Florida Title Insurance Study Advisory Committee is being proposed. The committee felt it was important to circulate drafts as soon as reasonable in order to avoid surprises and start building support among committee members and within the industry for a final product.
- The FLTA has received reports that the Florida Bar Committee on the Unlicensed Practice of Law will hold a hearing on short sale negotiations in February, 2011. We will be participating in those hearings.

LEGISLATIVE POSITION RECOMMENDATIONS

Because of the timing of this year's election cycle, no bills relevant to FLTA had been prefiled prior to the FLTA convention. However, because of our good working relationship with the RPPTL Section of the Bar, we have reviewed a number of legislative proposals they have undertaken which will affect our interests.

Following discussions, the following information on various legislative proposals and the Committee's recommendations for formal legislative positions was proposed to the FLTA Board of Directors. Each of the recommended positions was adopted by the Board as official FLTA positions.

1. RPPTL Bill on Hidden Liens

The RPPTL Section conducted a non-scientific survey of local governments which indicated a substantial number had types of liens which were not being recorded in the official records, creating a substantial impediment to identifying liens prior to mortgages and property purchases and to properly advise clients.

Local governments have a significant problem regarding the maintenance of foreclosed and abandoned properties and are responding with inconsistent and problematic local ordinances, some of which purport to alter statutory conveyancing mechanisms and foreclosure procedures.

In response to these problems, the RPPTL Section has drafted a bill which amends s. 695.01 and ch. 162 to reduce problems regarding hidden liens by (i) requiring all governmental liens (other than taxes, special assessments and those for utility services) to be recorded in the official records and to state their priority; (ii) clarifying and requiring a statement of the priority of liens asserted by local governments on the face of the filed lien; and (iii) expanding the homestead determination mechanisms of s. 222.01 to apply to other types of lien. This is the same bill FLTA supported last year.

FLTA Position: FLTA supports the work of the RPPTL Section in their proposed hidden lien bill.

2. RPPTL Bill on Electronic Recording

Several of the state's clerks of the court and county recorders were accepting electronic recordings prior to the 2006 adoption of the Uniform Real Property Electronic Recording Act, §695.27 (URPERA) and others began accepting electronic documents for recording before the rules contemplated in the Act were formally adopted. Because of the complexity of the rules governing the mechanisms for electronic filing, it is often difficult if not impossible to prove strict compliance with the rules.

In response to this, the RPPTL Section drafted a bill retroactively and prospectively ratifying the validity of all electronic documents submitted to and accepted by a county recorder for recordation, whether or not such electronic documents were in strict compliance with the statutory or regulatory framework then in effect and that all such filings be deemed to provide constructive notice.

FLTA Position: FLTA supports the work of the RPPTL Section in their proposed bill to address potential technical issues with regard to the Uniform Real Property Electronic Recording Act, §695.27.

3. RPPTL Efforts to Repeal Windstorm Rating Disclosure in Contracts

2008 legislation mandated that effective January 1, 2011, all contracts for the sale of a residential property include information about the windstorm mitigation rating of the structure, based on the uniform home grading scale adopted pursuant to Florida Statutes. F.S. 689.262 (2008).

The State agency (OIR) charged with promulgating the data to support the disclosure form, and charged with preparing the form, has not been able to undertake the process. Without the State agency's work product, residential real property sales are effectively prohibited.

During the 2010 session of the legislature, the offending provision was repealed (HB 545), however the repeal bill was vetoed by the Governor.

As a result of the veto, sellers of homes in Florida located in a wind borne region which will be offered for sale as of January 1, 2011 would have to obtain a System score. As of this date, there are no qualified inspectors who can determine the score, no methodology and no underlying data.

FLTA Position: FLTA joins with the RPPTL Section of the Florida Bar and the Florida Realtors in supporting repeal of the statute requiring disclosure of windstorm mitigation ratings, and further joins in support of an override of the veto of H.B 545 2010).

MISSION ACCOMPLISHED

November 16, 2010, the legislature, acting in special session, voted to override the veto. This repealed the disclosure requirement.

3. Brigham Fix

For some time, §689.071 has provided that if specific "Powers" language (full power and authority to deal in and with the property, to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property) is included in the body of a deed, subsequent title examiners do not need to examine the underlying trust. This authorization is part of the Florida Land Trust Act.

Because of the enhanced privacy afforded under §689.071, many properties acquired by revocable and estate planning trusts also included the "Powers" language in their deeds. In *Brigham v. Brigham*, 11 So. 3d. 374 (Fla. 3rd DCA 2009), the court suggested that the inclusion of the "Powers" language caused those trusts to become Land Trusts, and not subject to the fiduciary duty, prudent investor, restrictions on self dealing and other protections of the main trust code.

This has understandably created great concern in the trust and estates community, and the RPPTL Section is working actively to craft a legislative solution which preserves the privacy available under current §689.071 without removing estate planning trusts from the protections of the Trust Code and not compromising past title reliance on the statute. FLTA members and the RPPTL Title Insurance committee are actively involved in this process.

FLTA Position: The FLTA will interface with the RPPTL Section in crafting a legislative solution to the concerns raised in *Brigham*. FLTA will support a legislative solution to this problem which does not call into question the validity and marketability of previous trust conveyances.

5. Cure for Everglades Electric Case

The RPPTL Section has proposed legislation to cure the title difficulties caused by the strict reading of the statute 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 does not attach to the landlord's interest in the improved property if the leases provide the landlord's interest shall not be subject to the liens and an appropriate notice is recorded.

Everglades Electric Supply, inc. v. Paraiso Granite 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) all of the leases included the limitation language, but the language of some leases was phrased slightly differently than the "specific" language of the blanket notice.

This holding could result in title insurers significantly increasing underwriting requirements on property with a notice of commencement for tenant improvements.

The proposed statutory amendments will permit the use of the blanket notice option even if all of the leases for the property do not contain lien prohibition language or if the prohibition language in the individual leases vary so long as the lease under which work is being performed by a tenant contains the prohibition language and a blanket notice for the entire property is recorded (prior to the commencement of work) and advises that all leases for the property contain the prohibition language or lists the leases which do not contain it.

FLTA Position: The FLTA supports the RPPTL proposed legislation to reverse the unduly strict construction of Everglades Electric Supply, inc. v. Paraiso Granite,

As in years' past, the Governmental Affairs & Judiciary Committee will be closely monitoring and reporting on bills filed for consideration during the 2011 Session of the Florida Legislature.

The new FLTA Bylaws – by Frank Tricomi, Esq. - Chairman

NEW BYLAWS ADOPTED

At the FLTA general meeting, held at our recent convention, the Membership voted to adopt the revised Bylaws as presented by the Bylaws Committee. Although the Bylaws were virtually rewritten, the majority of changes made were cosmetic rather than substantive. The Committee's main objective was to modernize and make the Bylaws more readable by locating items relative to a particular topic in a single section. In the past various sections particularly relating to officers, directors, committees, etc., had been found in multiple sections of the Bylaws requiring one attempting to retrieve a particular piece of information to search several sections of the Bylaws. In addition to placing information relative to officers, directors, committees in single sections, the Bylaws were amended to add a permanent Finance Committee, an invaluable tool to the efficient running of the organization. Additionally, attempts were made to modernize the Bylaws by providing for the e-mail notification of board of directors' meetings and the responsibilities of the Executive Director, formerly the Executive Secretary/Treasurer were more clearly defined.

Although substantially rewritten, there are several outstanding issues which will be addressed over the course of the next few months and hopefully any changes, additions, amendments to the Bylaws will be in a form ready to be passed upon by the Membership at the February Winter meetings.

I wish to express my sincere gratitude to the members of the Committee, Pat Hancock, Shelley Stewart, Beverley McReynolds, Curtis McClung and Bob Booth, all of whom gave greatly of their time, and more importantly, their experience and knowledge to the project of updating the Bylaws. Additionally, I wish to thank Milana Myers of Southern Title who served as editor and was an invaluable asset in recording and providing revisions for review by the Committee.

The revised Bylaws were circulated to the Membership prior to the convention but if you have comments/suggestions, please feel free to express them. All in all, the project has been successful as far as it has gone. There is still work to be done and we hope to see you at the mid-year meetings where hopefully a vote will be taken on any amendments and/or changes to the Bylaws as presently adopted.

Ed Note: The full version of the new by-laws can be found on our website.



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A Survey Really is Required!

A couple of weeks ago, the FLTA leadership met with representatives of the Florida Surveying and Mapping Society to discuss their concerns that some in our profession – perhaps misinterpreting the Florida rules – have been advertising a willingness to remove the survey exception and issue FL Form 9, and ALTA forms 9.1, 9.2 or 5 endorsements without benefit of ANY survey.

Many years ago, the Department of Insurance (now split between the Department of Financial Services and the Office of Insurance Regulation) made clear that removing the survey exception or issuing “clean” endorsements without ANY indication of a survey was prohibited in Florida by both §472.031 and §627.784 (the casualty insurance prohibition). They also spelled out limitations on the use of older surveys with a “no changes” affidavit and other matters.

Because survey matters can generate claims, most of our title insurers have underwriting standards that are more conservative than the DOI/DFS/OIR guidelines. As a result, failure to follow your underwriter’s guidelines can result in liability for both the agent and the underwriter.

Now that the matter has been brought to the attention of our regulators, and our insurers, we would not be surprised to see increased scrutiny of our practices related to survey matters. Thus, we urge our members to carefully review the underwriting guidelines regarding surveys from your insurers and follow them strictly.

Rule Clarifies Home Warranty Payments to Realtors®

While it does not directly affect most title agencies, enough of us have business relationships with Realtors® or the suppliers of Home Warranty programs that we should be aware of a recent HUD interpretation.

HUD recently issued rules interpreting the application of RESPA to payments made to real estate brokers and agents in connection with home warranty coverages. The rule provided compensation would be permissible “only if the services are actual, necessary and distinct,” “not nominal” or “duplicative.”

After taking public comments, HUD supplemented the rule with a series of Questions and Answers which can be accessed at:

Q&A: <http://www.hud.gov/offices/hsg/rmra/res/responsetopubliccomment11-23-10.pdf>

Original Rule: <http://www.hud.gov/offices/hsg/rmra/res/homewar625.pdf>

As always, if a home warranty is taken out in connection with a RESPA-covered transaction, it must be reflected on the HUD-1/1A closing statement.



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Getting a Refund of Condo & HOA Estoppel Fees

During one of the recent FLTA Zone meetings, it became apparent that not all of our agents were getting the benefits of a very helpful change in the law that FLTA helped bring about several years ago.

First, the Helpful Change in the Law.

During the 2008 legislative session, FLTA worked closely with the RPPTL Section of the Florida Bar and our title underwriters on a law to address a systemic problem affecting our member agents.

Many Condo and HOA association managers have been charging, sometimes substantial, fees for estoppel certificates. This leaves our member agents with an often uncollectible expense in preparing for a transaction that, for whatever reason, didn't close.

The act made changes in both the Condominium Statute (§718.116) and the HOA statute (§720.30851) which require the association to provide an estoppel certificate within 15 days following a written request. The Act requires that the certificate be signed by an officer or agent of the association and state all assessments and other moneys owed to the association by the owner with respect to a particular property.

Where a certificate has been requested and paid for by a closing office in connection with a sale or mortgage that did not close, the preparer of the certificate is required to refund the fee if it actually receives a written request, and reasonable documentation that the transaction did not occur, within 30 days after the closing date for which the certificate was sought. The preparer (which may be the association, a management company, or a collection attorney) has 30 days following receipt of the request to make the refund. There is a subtle ambiguity in this Act. The closing office may not be entitled to a refund if the transaction closed through another agent.

The 30 day limit for them to receive your request is measured from the originally scheduled closing date, so best practices would suggest a title office routinely request a refund when a closing is delayed or rescheduled. Careful calendaring is recommended.

Please note: Amounts refunded to the closing office do remain the obligation of the parcel/unit owner, and the association may collect them from the property owner as an assessment. This may create a tension between your office and the property owner when a transaction has been rescheduled to a date outside the 30 day window.

The Problem with Enforcing the Statute:

Disappointingly, not all Condo & HOA management companies choose to comply with this law. Quite a few FLTA members have reported that some management companies flat out refuse. "We did the work, we aren't giving it back" is an all too common attitude.

Given the relatively small amounts involved, most title agents haven't pursued the recovery beyond a couple of letters. It simply wasn't seen as cost effective to turn the matter over to

an attorney, even though the Act expressly authorizes an expedited judicial proceeding to compel compliance, and the prevailing party is entitled to recover reasonable attorney's fees.

The FLTA Solution:

In these tough times, short sales are an increasing part of our business. But short sales fall apart much more frequently – leaving us stuck with more and more out-of-pocket costs.

I'm happy to report that we have negotiated a special arrangement with two FLTA member law firms to represent FLTA members in recovery of properly noticed HOA and Condo estoppels fees (subject to conflict checks and the usual engagement letter). More importantly, **these firms have agreed to represent you on a contingency basis and to WAIVE their normal retainer, if you are an FLTA member.**

Forms for use in requesting refunds and engaging these firms will be posted on the FLTA website.

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.

Fall is in the air!

This is our official **Fall** issue of the FLTA newsletter. If you missed any of the issues that were previously distributed, be sure to visit our website, as all past issues can be found there.

The next "official" issue is scheduled to publish in late February, AFTER the Mid-Winter meeting. Until then, check the website for updated info, or make sure we have your correct email address as most of our data is now delivered via email by broadcasting to our membership list.