



FLTA Tallahassee Report

Serving Title Professionals Throughout Florida

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A Message from the President

Jim Russick Esq.

Old Republic National Title Insurance Co

YOUR ASSOCIATION WORKING FOR YOU



This title is not a cliché. The Florida Land Title Association, through its various volunteers, has been extraordinarily busy over the last quarter. The importance of the work and the quality of the expertise directed at our various issues is nothing short of extraordinary. I marvel at how much I learn through my interaction with our

various committee members and the Board. Coordinating it all is a small but very talented staff. Let me give some examples.

Several dozen of our members traveled to Tallahassee the first week of February to participate in our annual Lobby Days. For those of you who have not been able to attend one of these events, it is truly special. We began our work with briefings from pertinent legislators and regulators. For instance, Representative Kathleen Passidomo addressed us about her foreclosure bill and the various provisions of particular interest to the title industry. This was important because the Agent Lobby Team had arranged dozens of meetings with legislators so that we could advocate bills of interest to us and the title industry. Talking points were developed in advance on

the Passidomo bill as well as Representative John Woods' Hidden Liens legislation. We then fanned out in small groups to cover as many of the key committee members as possible. If you ever wanted to be part of the process, if you ever wanted to learn how to make a legislative impact on our state issues, we teach you step-by-step how to do so.

I will refrain from a legislative report. Two weeks remain in the legislative session as I write this. Suffice it to say that there remains a lot to be done, and Alan Fields, our fine Executive Director, continues to keep the Association's profile both high and professional. Here I must recognize Alan's recent selection to the prestigious American College of Real Estate Lawyers. (See accompanying article)

Last week, the FLTA hosted its annual Claims Round Table. Our Committee Co-Chairs, Marty Solomon from Carlton, Fields, and Mario Ruiz from Cohen/Ruiz, put together an outstanding program. The level of discussion on the current claims issues between insurer claims personnel and the outside counsel that service our industry was very sophisticated and very valuable to all 94 attendees.

This special event, held every year by invitation only, is one of the most unique and special events the Association hosts. There is not a single person, agent, agency, insurer, or company that does not benefit from the work of this committee.

While all of this has been going on, our Forms Committee, chaired by Karla Staker, has been working hard

Forms Committee Update:

Our forms committee, chaired by Karla Staker of Fidelity National Title, has been busy reviewing the ALTA form 9, form 28 and 35 series of endorsements which were recently updated to address the Nationwide case. Stay tuned for some new forms.

to refine our product and work with the officials with the Florida Office of Insurance Regulation to implement these improvements. It is vital to our industry that we keep the title insurance product as current and responsive to the needs of our consumers as possible.

I cannot sufficiently thank Karla and this committee for the hours of often

tedious, but essential, work they do for the benefit of all our membership.

It has been said that life is about giving back, about sharing a part of ourselves for the benefit of the greater communal good. In the case of the Florida Land Title Association, that community happens to also be your business and livelihood. As you give of your time, you also receive the benefits by and through this unique, niche industry that is so fundamentally important to the economy of Florida and the United States.

So I thank all of you on all of our committees who are doing the work of the Association and encourage each of you to recruit new members.

Fields Selected for American College of Real Estate Lawyers

The American College of Real Estate Lawyers (ACREL) is a prestigious group of lawyers that invite only a select few to join their ranks. It has just gotten one darned good lawyer better.

It is my distinct pleasure to announce that our very own Executive Director, Alan Fields, was recently tapped to join this elite group. He joins only 46 Florida attorneys in a nationwide organization that totals less than 1000 members. His selection reflects great credit upon not only Alan personally, but upon the Florida Land Title Association.



This should come as no surprise to those of us who have had the opportunity to work closely with Alan over the years. I encourage you to take the opportunity to congratulate Alan on this prestigious appointment.

Upcoming Webinars

Homestead Part III Estates & Trusts

May 14, 2013

[Registration Now Open](#)

Indemnity Letters and the Florida Treaty Watch for the Announcement

Did You Know ...

That you can access complete filings from most Federal and Bankruptcy Courts without leaving your Desk at www.pacer.gov. A link to this and other search resources is on the FLTA [Members-Only](#) page.

Agent Section Report Interview with Rosa Peck

Vincent Cassidy, Chair
Majesty Title Services, LLC



Dear Fellow Florida Title Agent:

This article is about Good News and the “Other.”

Here’s the Good News. Many agents are seeing a serious uptick in their business thanks to improving market conditions namely, stabilizing home prices, lower housing inventory, pick up in construction and favorable interest rates. So the perfect storm is creating a favorable market for title agents, something not felt in quite a while. As I write this letter, two of the three major national lenders have just reported first quarter earnings in which they indicate the mortgage business is slowing. Let’s hope they are talking about the rest of the country.

As far as the “Other” AKA “Bad News”, several agents have commented that finding talent to support their growth has become very difficult. With so many people having left our industry, even finding someone with experience is rare, and should someone apply for an interview, they typically have superficial title experience. This is a trend that should be concerning to all of us. One thing the last 20 years has taught business folks is to manage expenses

to the bone; to create a “Just in time Mentality.” This approach seems to be causing some pain. I am curious what other agents may be doing to harvest talent? I know in our agency the last few hires have been from outside our industry. If you have ideas, please post to the [Title Forum](#) at FLTA.org.

I patiently await more information from ALTA on Best Practices. This time last year we started hearing about the Vetting Companies and their solution to provide comfort to lenders that Title Agencies are worthy of holding escrow. Don’t think for a minute that issue has been resolved. In fact, right now it feels like we are in the eye of the storm; it was blowing last year, it’s been quiet lately, but the backside of the storm is still brewing and expect more impact.

Looking for more information on the issue? Visit the [Members Only](#) section of FLTA.org and review Chris Abbinante’s 2012 Convention Presentation. If you missed last year’s FLTA convention, you missed a great presentation. Chris said numerous times, that the changes that are brewing on a national level “**Do Not Support the Current Agent Model.**”

FLTA is fighting for the agent model. We need your involvement to continue the fight. Please stay engaged and ask other agencies to get active as well. Remember all agents are invited to join the Monthly Agent call held the first Wednesday of each month. It lasts for one hour and we review the latest issues. See the [Agent Section](#) of FLTA.org for details.

The 2013 Convention is right around the corner. The feedback from last year was that the logistics were great as was the location. Since you said it was great, we are returning to the Renaissance Hotel in Tampa at International Plaza. Our theme this year will center on Leadership; Leadership in the Real Estate Industry, in business and in our lives.

Expect the Unexpected!

I know you will be impressed with this year’s lineup. We are going outside the title industry to deliver content. I am excited. We are finalizing speakers and as soon as we can release our speaker names we will do so. Once again Robin Cardella is the Chair of the Convention is she is doing a great job.

Continuing the trend of highlighting an agent pioneer, I am pleased to introduce Rosa Peck. Rosa is well known within the agent community and she owns Title Connection, LLC in Naples, FL. Here is my interview with Rosa:

Interview with Rosa Peck Title Connection, LLC - Naples

When did you start in title, and why?

I started like most. I had a summer job while in college with a real estate attorney in my home town.

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



When I moved to Tampa I applied with some local law firms that were advertising in the Sunday newspaper. I set

up interviews on that Monday morning and had three interviews that same morning. One interview was with Tom Danaher at the firm of Blackwell, Walker. I didn't know at the time that it was the largest law firm in Florida. I applied at the Tampa office. Blackwell, Walker represented AmeriFirst Federal Savings and Loan who were their largest client. When I came home for lunch, I had a message on the answering machine to call Mr. Danaher. He offered me the position, I accepted it. I knew absolutely nothing about Florida law, rules and procedures. Tom, the other attorneys and staff were so kind and helpful. I loved the work and the relationships that I still have today with some of those great folks. It was not until Kevin Hussey, Stewart Title of Pinellas County recruited me to the title side that I knew that this was where I would grow my career. It was the refinance boom of 1985 and I worked overtime on my very first day. Kevin to this day is still my mentor. I owe him a lot and will be forever grateful to Kevin.

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

My strategy is really quite simple. I take advantage of all the education that I can possibly make time for. I belong to my trade associations, FLTA and ALTA. It offers so much of the larger picture that we often miss when we remain in our office and don't venture out of our small circles. Having a good understanding of the big picture of our industry

provides us the opportunity to speak intelligently about title insurance and settlement procedures with our customers. If your customer sees that you are experienced and knowledgeable in your roll in a real estate transaction trust becomes a huge factor in growing your success.

What mistakes did you make along the way?

Taking on too much. Only about 9 years ago did a senior level executive point out to me that you can't compress time. It was a startling revelation. I was so busy trying to do it all when there just was not enough time. At that point I stopped trying to do all and be all. I chose what I felt was the most important role for me and focused on those areas and the results have been amazing.

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

Certainly what I see as the ALTA Best Practices, and putting those Best Practices in a compliance manual, meeting with their staff and auditing their own offices on a regular basis is one of the best things to come to the agency side of our business. As the real estate market improves so will new settlement agents. I hope to see a higher quality of agents emerge. Those agents who are increasing their insurance and bond coverage's on their own accord, making efforts to secure their customers personal information through investing in technology and sound business practices without the demand of regulation will be our long term successful agencies.

Take us through a normal day in running your agency

My work day normally begins with checking my escrow account. I reconcile first thing every morning. I check messages and my list of things to do for today and finish up what may have been left on my list from the previous day. I meet with my associates and we discuss priorities.

The day never seems to go as planned. No matter how well you planned or how organized your office may be it is that one phone call or E-mail that scrambles everyone to Plan B. If I'm receiving volumes of phone calls and E-mails, I worry, if I'm not receiving volumes of phone calls and E-mail, I worry more. There are always, title searches to examine, commitments and title policies to be prepared, Settlement Statements and documents to go out on time, and of course the closings. I personally close most of my transactions with our customers. I enjoy this time with my customers the most. I usually go home around 6:00 PM and work from there for awhile. I'm in a paperless environment and internet based. Working from home can be a great stress reliever. I try to read the current issues on the ALTA and FLTA web site daily as well as the E-mails that I receive regarding our industry. As for the business side of my agency, I do most of that work on a weekend day. A six day work week is normal for me.

You are active with FLTA, what made you get involved?

Kevin Hussey taught me to be involved in my industry. He taught me that it was the right thing to do for my business and for me personally. He was so correct. FLTA has made me a better title agent, a better professional and certainly keeps me in view of the bigger picture.

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

Yes, too many to name. I have already mentioned Kevin Hussey. When you reflect on conversations and examples set by others you will find that those very people shape you into who you become and how you manage others. You will continually change and grow if you allow it to filter in. Everyone has something good and something bad that you can take away. I do learn the most when

listening to my customers and my associates. My involvement over the last 7 years with Florida Gulf Coast University Athletic Department has had a huge impact on my work and personal life. I now live in “Dunk City” and my new hand bag is blue and green. Seriously, the example of dedication, will, hard work and determination of our student athletes has had a huge impact on my life. Go Eagles.

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

I think that my Agency is remarkable. We are in a boutique environment. Actually some of my customers refer to us as “Boutique Title”. I manage it as if it were a Fortune 500 company and provide customer service as if any particular customer is the only one we have. I have tried to take the best from every business ex-

perience and incorporate it into my Agency. We aren’t aggressive in our marketing but gain one customer at a time through providing an above expected customer service experience. You accomplish that and the numbers will take care of themselves.

Privacy & Security Breaches – Protecting Your Business

**Matt Donovan, Hiscox USA &
Larry Galpern, Professional Risk Organization**



In an age where copious amounts of information are moving from filing cabinets to hard drives, data security issues can plague any business that is heavily reliant on personally identifiable information (PII). Regulators have seen the need to push businesses to safely secure this information through a myriad of enforcement agencies. The driver for this movement is clear; as data flows to hard drives, servers or the cloud, there is an increasing need to ensure its security. Significant volumes of information can now be stored on one small device or in one hosted location to be accessed over the web. Therein lies the problem for most businesses that are dependent upon using this type of information. The days where one file or one box of files might be lost are largely behind us. Now if your one “file” is lost (or breached over the web), it could potentially contain the sensitive information of every single customer of your business. For those industries still heavily reliant on paper records, the information held is even less secure and can pose even more of a threat (even if the volumes exposed are lighter).

It seems like there is a new report of a “cyber attack” or “privacy breach” in the news every day. Cyber issues have even found their way into the President’s State of the Union address. As the size and scope of privacy breaches has grown over the years, so has their notoriety in the press. With notoriety comes enforcement, in an effort to ensure best efforts are being made to avoid these types of issues. When governmental agencies, banks, defense contractors and Fortune 500 companies experience breaches, it shows that even the best efforts toward data security just aren’t enough.

Laws are now in place across the country that put the onus on businesses to manage the impact of a privacy breach (whether paper or digital) on the public. Further, the definition of “breach” has been expanded to include accidental disclosure of information, which is often broadly defined to include various types of data held by businesses. This could occur through a lost portable device, lost backup tape, discarded paper documents that haven’t been put through a shredder or even a machine donated to a charity that has not been properly wiped of the data it contained. When these situations happen (or an outright theft or hack of information), these laws require certain steps be taken by business owners.

After PII has been lost, stolen or breached, most companies must outsource the computer forensics services needed to figure out what information has actually been compromised. This is a crucial component of navigating a breach, as legal obligations are required of a business that experiences one of these events. Notification require-

ments put the burden of letting individuals know that their information has been potentially compromised, on the entity that has conducted business with the individual. In many cases, certified mail must be used and can cost up to \$3-\$4 per letter. These notification letters generally contain an offer of credit monitoring for the individual. One year of credit monitoring typically costs anywhere from \$9 to \$20+ per individual, depending on the size and scope of the breach. Lastly, a call center must be in place to field the incoming calls for redeeming credit monitoring services offered in these notification letters.

These expenses are obligations of a business that is victim to a breach, often before and regardless of whether there is any evidence the breached information has been used. The days of sweeping these events under the rug have gone. Depending on the number of compromised records, expenses totaling six-to-seven figures are quite common. These first party notification obligations are often the precursor to third party lawsuits (typically alleging some financial loss and mental anguish) and regulatory investigations. When class-actions are filed, defense and settlement costs can become astronomical. Regardless of the size of the event, most companies are not prepared, both operationally and financially, to handle these obligations and costs.

Businesses that hold large volumes of PII need to be aware of the exposures to their livelihood if this information were to ever be exposed. Most businesses are cognizant of employment practice liabilities and general liability, but are unaware of the significant threat that data breaches pose on the solvency of their business. When the largest and most sophisticated organizations on the planet repeatedly fall victim to these situations, there is no real bullet-proof solution to preventing it from occurring.

Here enters the world of privacy & data breach insurance coverage. Whether information is compromised by a hacker, rogue employee, accident/error, theft or other means, expenses to comply with the ensuing legal requirements add up quickly. Businesses of all kinds have begun realizing that they need to insure these liabilities in order to minimize the potential catastrophic effects of a privacy breach on their company. Insurance coverage has evolved to a point where businesses are able to insure these exposures at a reasonable cost. We have entered an age of large volumes of sensitive data being aggregated in very small places. If a situation occurs where PII stored by a business is exposed, a simple insurance product can not only ensure they won't have to shutter their doors from a financial perspective, but can assist you in providing the necessary response to minimize the impact on your reputation.

Skip Straus is your NEW Agent Section Vice-Chair



Upon motion of the Agent Section, the FLTA Board unanimously elected Arnold (Skip) Straus as Vice-Chairman of the Agent Section. In that role, he will succeed Vince Cassidy as Agent Section Chair in November. Skip has been involved with the FLTA for years. He completed a 2 year term as Zone Vice-President last November,

and immediately assumed the often thankless role as Vice-Chair of our hard working Government Affairs Committee.

Skip is a partner in Straus & Eisler, P.A., a general practice law firm in Broward County, concentrating on real estate transactions, foreclosures, probate, and business mat-
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ters. Since 1979, Straus has owned, operated, and represented title agencies, including his current company Enterprise Title, Inc., which is a top title agent for First American and The FUND (ORNTIC).

Straus is a member of the Florida BAR RPPTL Section, founding member of the South Florida Property Records Education Partnership (SF-PREPS), and a member of the Florida Electronic Recording Advisory Committee. He is a Past President of Temple Beth Emet. In July, 2000, Straus pioneered the nation's first completely electronic purchase and sale mortgage closing through his company eCloz.com Inc. He graduated from Tufts University (B.A.) and University of Miami (J.D.)

Please join us in congratulating Skip on his selection to help lead FLTA through the challenging times ahead.

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The Employment Law You Are Probably Breaking

Alan Fields
Executive Director



A Nebraska-based title company recently agreed to pay 24 workers a total of \$92,782 in back wages following an investigation by the U.S. Department of Labor's Wage and Hour Division. The investigation found violations of the Fair Labor Standards Act's (FLSA) overtime and record-keeping provisions when residential and commercial real estate closers were found to be improperly classified as "exempt" from overtime requirements.

The FLSA is tricky, violating it is all too easy, and plaintiff's law firms are looking for the opportunity to come after you. So it's important to understand the rules and consult with your legal counsel to keep your company out of trouble.

First, the general rules. If an employee is classified as a non-exempt employee, when they have worked more than 40 hours in a given work week, they have to be paid at time-and-a-half for any additional hours. If they are an exempt employee, they aren't eligible for overtime, but there are other rules that come into play -- like you can't dock their pay.

This means that no matter how much it annoys you, if you have an exempt employee who takes off two hours early to do anything--doctor's appointment, soccer tournament, just plain bored and wanted to go home--you cannot dock her pay. That is, if your employee shows up for work, even if it's just for a few minutes, you must pay for the entire day. (In the case of remote workers, if they so much as log onto their computers, call on one customer, or do any anything work related, that counts.)

You can discipline, fire, demote, or yell at them. But, you may not dock their pay. And if you do dock pay? You've arguably just made that person non-exempt. Which means you not only owe overtime going forward, **you owe it going backwards**. So your attempt to save \$50 by docking two hours pay, could mean you'll be out thousands in back overtime pay.

Pay docking violations are unfortunately quite common. As are violations in which people are labeled "exempt" when they really should be "non-exempt." It's not always easy to tell how individual employees should be categorized, the rules are complex, and the FLSA hasn't been updated to reflect today's knowledge workforce.

Do you understand the difference between exempt and non-exempt employees?

Of course, the Department of Labor doesn't have a clue about the level of professional knowledge really required of a title examiner

or closer -- so offer little in the way of specifically applicable guidance.

So how do we decide whether an employee is "Exempt" or "Non-Exempt"? Here are some general guidelines and we encourage you to consult the Department of Labor website (we've included links) for more specific questions.

In order to be considered an exempt employee, employees have to meet several qualifications. They must be paid a minimum of \$23,600 per year, receive an identical paycheck each week (bonuses and commissions can be added on top of this, but you can't pay someone less), and perform "exempt" job duties falling within one of the following categories.

Executive Exemption ([See Dept of Labor Fact Sheet 17B](#))

To meet this exemption, the employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise; the employee must customarily and regularly direct the work of two or more other full-time employees or their equivalent; and the employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given "particular weight."

Administrative Exemptions (See [Dept of Labor Fact Sheet 17C](#))

To qualify for the administrative employee exemption, the employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and the employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

This exemption sounds like it would apply to "secretarial," "closer" and "admin" roles, but rarely will. This exemption is for people who have a big impact on the business, work independently and make decisions on their own. The exemption was designed for non-supervisory policy making staff in departments like tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet and database administration; legal and regulatory compliance; and similar activities.

In fact, the title industry has already lost the argument that escrow closers (at least those who do not supervise other people) are exempt employees under this exemption. See [Reich v. Chicago Title](#), 853 F.Supp. 1325 (1994) (U.S. Dist.Ct. Kansas, 1994).

The test for the administrative exception has two parts: First, the administrative exemption distinguishes between those whose primary duty is administering the business affairs of the enterprise from those whose primary duty is producing the commodity or commodities, whether goods or services, that the enterprise exists to produce and market. *Dalheim v. KDFW-TV*, [918 F.2d 1220](#), 1230 (5th Cir. 1990); see also *Bratt v. County of Los Angeles*, [912 F.2d 1066](#), 1070 (9th Cir. 1990) (test is whether workers engaged in running the business or carrying out its day-to-day affairs), *cert. denied*, 498 U.S. 1086, 111 S.Ct. 962, 112 L.Ed.2d 1049 (1991).

If the employee's primary duties do not fall on the production side of the scale, we move to the second part of the test – whether the work performed is of substantial importance to the management or operation of a business. Again, the second part of the test is not as clear as we might like, but is thought to require two or more of the following:

- Authority to formulate, affect, interpret, or implement management policies or operating practices
- Carries out major assignments in conducting the operations of the business

- Performs work that affects business operations to a substantial degree
- Authority to commit the employer in matters that have significant financial impact
- Authority to waive or deviate from established policies and procedures without prior approval, and other factors set forth in the regulation
- Authority to negotiate and bind the company on significant matters
 - Provides consultation or expert advice to management
 - Involved in planning long- or short-term business objectives
 - Investigates and resolves matters of significance on behalf of management
- Represents the company in handling complaints, arbitrating disputes or resolving grievances

Do you know when you are allowed to dock an employees' pay?

When the Department of Labor rules were updated in 2003, ALTA argued that the *Chicago Title* case had been wrongly decided, and asked the Department to expressly include settlement and escrow officers within the administrative exception. The Department declined. ALTA's letter can be found [here](#).

Learned Professional Exemption (See [Dept of Labor Fact Sheet 17D](#))

To fall within the Professional exemption, the employee's primary duty must be the performance of work requiring advanced knowledge customarily acquired by a prolonged course of specialized intellectual instruction. The work must be predominantly intellectual in character and includes work requiring the consistent exercise of discretion and judgment. Thus Doctors, registered nurses (but not other nursing staff), lawyers, accountants (but not accounts payable/receivable people), and almost everyone making more than \$100,000 per year are considered exempt. People who have considerable professional discretion are also exempt.

While being a commercial title examiner certainly requires a high degree of advanced knowledge, the phrase "customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. Since there is no standard degree program that is a prerequisite for becoming an examiner, this exemption will generally not apply to non-supervisory examiners.

Computer Employee Exemption (See Dept of Labor Fact Sheet 17E)

To qualify for the computer employee exemption, the employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field and the employee’s primary duty must consist of:

- 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Do you know when overtime pay is required?

- “Inside” sales staff and telemarketers are not exempt under this provision.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

If an employee doesn’t meet the requirements of one of these exemptions, they need to be paid by the hour. Which means, that if a closer checks her email at home, she needs to record that time on her time sheet and be paid for it. If

your examiner says late, overtime. It also means that even if you don't authorize overtime, if the employee works it, you must pay him. You can fire him after paying it, but you must pay.

This is a complex and expensive area of law to get wrong. Plaintiff’s attorneys are circling and we urge all FLTA members to consult your own legal counsel to evaluate the applicability of the Fair Labor Standards Act to the way you have structured roles in your offices.

Disclaimer: While the author of this bulletin is a lawyer, he is not your lawyer. The information contained in this bulletin is provided for educational purposes only as well as to give you general information and a general understanding of the law. It should not be construed as legal advice nor establish any attorney-client relationship. You should not act or refrain from acting on the basis of any content without seeking the appropriate legal or other professional advice from an attorney licensed in your state or jurisdiction based on the particular facts and circumstances at issue.

Outside Sales Exemption (See Dept of Labor Fact Sheet 17F)

To qualify for the outside sales employee exemption, ALL of the following tests must be met:

- The employee’s primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer’s place or places of business.

FLTA Webinars Prove Very Popular

FLTA’s for-credit webinars have continued to be very popular with our members. These courses are FREE to our members and their employees.

Name	Date	Attended
Florida Homestead - Part 2	2/7/13	153
2012 Legislative Update (Repeat)	1/8/13	69
Florida Homestead Part 1	12/4/12	169
Notary Ethics	10/9/12	169
2012 Legislative Update	8/15/12	164
Totals		724

We are very pleased with these strong attendance levels.

Several members have told us that they are using these as group training opportunities, including even their non-licensed personnel. Others have been bringing in lunch for their staff on webinar days.

Tell us – How are you using these programs?



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Would YOU Have Spotted this Crime?

Brought to you by FLTA's Fraud Prevention Committee; Peggy Williams, Chair*

In an effort to help FLTA members spot different types of fraud, and to appreciate how easy it is to become an unwitting co-conspirator, we occasionally report on the details of a crime. This one is of particular interest as one of the first completed prosecutions of a fraud occurring after the downturn. We wish to publicly commend Tom Palermo, the Assistant U.S. Attorney who prosecuted this case, and spent hours upon hours tracking down the details of the underlying crime – so we can understand it in detail.

U.S. District Judge Elizabeth A. Kovachevich sentenced John Lebron (33, Tampa) to 26 years in federal prison for conspiracy to commit wire fraud, wire fraud affecting a financial institution, and making false statements to a financial institution. Lebron was also ordered to serve a 5-year term of supervised release, following his release from prison. As part of his sentence, the court also entered a money judgment in the amount of \$1,469,300.

According to testimony and court documents, Lebron was a Florida-licensed realtor and worked as a loan officer. Taking advantage of the downturn in the real estate market, Lebron participated in mortgage foreclosure rescue fraud and short sale fraud, which is sometimes called “flopping” a house.

As part of the scheme, Lebron had hand drawn signs placed on the side of the roads, usually in low income neighborhoods. These signs often advertised the sale of nonexistent houses. The purpose of the signs was to generate leads, to prey upon unsophisticated people, particularly those losing their houses in foreclosure.

Working with another Florida-licensed real estate agent, Lebron opened up a company, called EZ Investments. During their first deal, they used a victim whose house was falling into foreclosure. Lebron arranged for a straw purchaser - his sister - to buy the house in a non-arm's length transaction. That is, Lebron controlled both ends of the deal. Lebron also served as the loan officer, thus receiving the mortgage broker's commission, although another loan officer's name was placed on the paperwork to conceal what Lebron had done. Lebron also took the check that represented the proceeds of the sale of the home from the distressed home owner without her knowledge.

After the straw purchaser “bought” the house, Lebron paid the original mortgage for a short time to prevent the victim from detecting the fraud. He then arranged a

short sale of the house to his brother-in-law, in another non-arm's length transaction. Six days later, using simultaneously recorded deeds, the property was resold to a “credit partner,” that is, another straw purchaser, who Lebron had arranged to buy the house before the short sale proposal was submitted to the bank. This straw purchaser, essentially unemployed, was added on to bank accounts under the control of the conspirators to make it appear that he had assets. The down payment for the transaction was funded through those bank accounts. Fake pay stubs were created to give the appearance that the buyer had an income to support the loan.



In these deals, the conspirators pocketed the money that should have gone to the original distressed home owner. They also received the mortgage broker commission for arranging the first straw purchaser's loan and other commissions and fees, and got the difference between the short sale amount and the new loan. The straw purchasers were each paid \$5,000 for their role in the scheme. In addition, Lebron acquired four other loans through fraud.

During the course of the conspiracy, Lebron used stolen and false identities; fraudulently verified his own employment claiming jobs he never had; and, for at least one of the properties, bought it as his primary residence when he legally could not move into it. Lebron committed these crimes while on pretrial release and while on probation.

Now the hard questions:

- If Mr. Lebron had wandered into your office asking you to close just one leg of the transaction, would you and your staff have spotted the red flags?
- Would you have disbursed the mortgage payoff funds or the seller's proceeds to Lebron rather than the correct party? Would you have noticed the incorrect endorsement on your copy of the check?
- Do you have internal procedures in place to identify the parties to your transaction?

- Is your staff trained to spot a “straw purchaser”? Do they know what questions to ask? Or how to respond when you think you have a straw purchaser?
- How is your staff trained to deal with Flips & Flops? What would they do if they realized property was being sold for far more than in a recent short sale? Who do they notify?
- Or would you – like the agency closing Mr. Lebron’s transactions, have blindly closed these transactions, followed Lebron’s instructions, and become an unwitting co-conspirator?

- Would your office have closed multiple legs of this scheme, if asked? And thanked Mr. Lebron for bringing you all this business?

Seeing it all laid out in court filings, the scheme is obvious – but criminals rarely if ever lay out all the details to their selected closing agent/victims. You must be ever vigilant. You must ask the tough questions.

As closing agent, you are the last line of defense for the sanctity of our real estate economy.

This article is derived from materials provided by the United States Attorney's Office for the Middle District of Florida

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

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Rockledge, FL

Delray Title & Abstract Co
Susan Algonas
Delray Beach, FL

Fairview Title Company
Shelley Slater
Tampa, FL

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Gold Coast Settlement Services
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Carol Robison
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LA Title Solutions
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Shapiro Ramos, P.A.
Cynthia Ramos
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Mark Schechter
Ft. Lauderdale, FL

South Florida Trust & Title
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Bonita Springs, FL

Siesky, Pilon & Potter
James Pilon
Naples, FL

South Milhausen, P.A.
Todd South
Orlando, FL

Southeast Title of the Suncoast
James Smith
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TLC Title Company of Florida, Inc
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True Title Agency, Inc
Richard Fielder
Big Pine Key, FL

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Tampa, FL

Wisconsin Title Service Company
Carolyn Hoyer-Abbinante
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Inspired to eliminate setbacks for everyone at the closing table, our Team of legal, real estate, and technical professionals has developed a fast and efficient release tracking service. The depth of our commitment and ingenuity present in our people is derived from the passion for what we do and who we do it for — our clients, colleagues, and customers.

My approach:

As a research specialist, I spend every day looking at land records across the nation; constantly seeking to develop new and innovative methods for fast, efficient and accurate lien release searches. It gives me satisfaction to know each release I locate is one less homeowner, settlement agent, or attorney dealing with a headache in the future.



Bill Lang
Team Member Since 2007

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a fresh approach [house icon]

Six Ways to Sunday Name Searches in an Electronic Era

When we moved to computerized document indexes in the recording offices, it became critical for title examiners to know and understand the idiosyncracies of the computer systems being used in a given county. Do you search last name first? Do you separate the names with a comma? Is there a space after the comma? And so forth.

This doesn't begin to touch on the need to search variations of a name to pick up human inconsistencies in the coding. Is O'Keeffe posted with a space? an apostrophe? All together? One "E" or two? One "F" or two? So we quickly learned to search common variations of each name, and to flip the order of the names to make sure we weren't missing anything. People with two "first" names – Lee James – or two last names – Hunter Reilly – are at particular risk for being mis-indexed. Human error and inconsistent application of procedures can affect even the best of systems.

Recent changes to the computer indexing in Flagler County, reminds us of the importance of searching multiple permutations and variations in our searches and adds entirely new dimensions to searching.

In Flagler County, a search of "Smith,John" (with a comma and no space) will now bring up documents recorded before 11-5-2012, but nothing after that date (even though the example instructions shows the use of the comma). To conduct a complete search of Mr. Smith, it is also necessary to search "Smith John" (space without a comma) in order to turn up any instruments after 11-5-12.

A similar issue applies to trust names that contain the name of the individual. Beginning July 1, 2008, the Flagler clerk indexed such trusts as a business name. For example, when searching for the "John A. Doe Revocable Trust" enter: JOHN A DOE REVOC TRUST. To locate instruments involving the trust prior to July 1, 2008, the search would be entered DOE,JOHN A REVOC TRUST, and of course you will want to search variations, the trustee name standing alone, and often the names of the known settlers.

We are also advised that the Flagler Clerk's office has started indexing legal descriptions differently. Under their

old system, it was possible to cut and paste the legal description in the search field. Now, if you do that you will only pull up documents before a certain date and not get more currently recorded documents. While using the additional information fields (like legal descriptions) as a cross check, is a useful tool for the examiner, these additional information fields should not be relied on to limit your search, nor do they substitute for actually reading the documents.

Regardless of whether the clerk properly indexes any or all of the legal descriptions in the recorded document, the recording provides constructive notice of the entire content of the recorded document. For example, in Regions Bank v. Deluca, 97 So.3d 879 (Fla. 2d DCA, 2012) a second parcel shown on exhibit A of the mortgage was not included in the Clerk's "legal" field. The court held that even though the second parcel was not indexed by the clerk the mortgage was valid and provided constructive notice.

Even if incomplete or ambiguous, the information you find in the document can create a duty to make further inquiry and investigation. So even when your quick search of the legal description field of the clerk's record seems to create a complete chain, it is still necessary to review ALL of the documents picked up in your grantor-grantee search to identify liens, conveyances whose legals may have been mis-indexed (or not indexed) and the like.

While we used the Flagler Clerk as an example, these are issues that affect every computerized index system – whether maintained by the local recorder, your underwriter, or your favorite title plant. Some systems are better than others in automatically searching variations and "sounds like" names but the burden is still on you to know the idiosyncracies of the system you are relying on and to search various permutations, spellings and name orders as part of your search.

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:

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

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- First Boston Title
- Master Title
- Ryan and Marks
- Title Company of Brevard

Should We Be Warning Our Customers About This One?

I recently completed my own home purchase and several weeks after closing, I received a series of letters from different companies telling me that I needed to have a certified copy of my deed. They graciously offered to provide one for amounts ranging from \$54.50 to \$89.00.

Of course, under Florida law, the clerk will provide certified copies of a deed to anyone for one dollar per page, plus two dollars for the certification. So this is probably a very profitable business, but provides a service our members are already providing.

Should we be “warning” our buyers at the closing table that they will likely receive such a request and that they can safely ignore the solicitation. Perhaps even reminding them that you will be sending a copy of the recorded deed to them as part of your service -- Or even stating that you are more than happy to obtain a certified copy for a few bucks if they ever need one