



100 Years of Leadership

Serving Title Professionals throughout Florida

Vincent Cassidy, President

Alexandra J. Overhoff, Esq., Executive Director

# Tallahassee Report

2014

Issue# 1

## In This Issue:

- > [A Message from the President](#) | Vince Cassidy - Pg. 1
- > [Data Call Is Important To You](#) | Jeff Stein - Pg. 3
- > [Restoring Risk Structure](#) | Ted Conner - Pg. 4
- > [2014 Lobby Days](#) | Alexandra Overhoff - Pg. 6
- > [Welcome New Members](#) - Pg. 7
- > [Legislative Update](#) | Alexandra Overhoff - Pg. 9
- > [Examine This!](#) | John Redding - Pg. 12

## A Message from the President

Vincent Cassidy | Majesty Title Services, LLC



## Thank You, Change and Leadership



Dear Members:

My message starts with **Thank You**. In preparing to be the next President of FLTA I have seen how many people before me have contributed their time, talents and treasure to

make this organization what it is today. To all the previous Presidents, every member of FLTA and every title professional in Florida, I owe all of you a BIG THANK YOU. You have managed two full time jobs

at once (one unpaid) and obviously you have succeeded because FLTA is a great member organization fighting for our industry because of your leadership.

**Change:** I am a big fan of change. I like change because it's an external force that if capitalized upon can be a game changer; and to be frank, I like change because it necessarily fosters innovative and competitive actions which ultimately benefit the entire industry. When you think of change-agents like technology, education or even legislation, look at the companies that have embraced the change, and look at the companies that took the position that the change agent wasn't a game changer. Xerox is widely credited with creating a machine that was shaping the personal computer's future. But Xerox Executive Management saw itself as an imaging company not fully recognizing what a change-agent they created. Apple and Microsoft credit their early success to

capitalizing on the changes Xerox created. Jobs and Gates saw that technology as game changing and the rest is history. Our industry may very well have a change-agent. It's called Best Practices. For the last two years I have heard Chris Abbinante speak to our industry and the line he uses often that is so impactful is "The current agent/underwriter model does not support the changes that are coming." I believe Best Practices is a call for action. I believe those agents that are early adopters of the assessment and certification process will be capitalizing on an opportunity to grow their business AND remain an Agent in the new environment. I also believe those agents that have the Xerox mentality may struggle to survive. FLTA is following this change closely and will continue to keep its members updated on Best Practices. The change is coming. Are you embracing it or ignoring it?

**Leadership:** When change comes, it's the leaders who embrace or capitalize or just deal with the change that make things happen. That's why I wanted to focus on the importance of Profitable Leadership for our convention. Our Keynote Speaker was Major General Karl Horst, US Army, Retired, Chief of Staff for Central Command (CENTCOM). I have had the pleasure to become friends with the General this past year, having heard him speak several times. When I think of what our military does to protect us and the way we lead the world as a super power, I know it takes great leadership. I enjoyed hearing the General's Hypothesis as well as his views on leading others. He said when your team succeeds, praise them; when they fail recognize that YOU failed to lead them. I am so grateful for the General's commitment to our country and it makes me think of a famous line from a movie, ".....you want me on that wall, you need me on that wall." General Horst,

**thank you** for your leadership, your service and for sharing your experiences with us. The Keynote speech was videotaped and is available by accessing this link:

<http://youtu.be/a3bHarB1UDo>

This past year's convention was also about engagement. The breakout groups identified issues we should focus on and delivered to the board the mandate to address these issues. Alex Overhoff is preparing a plan to address the four Pillars that were voted for, Create Basic Training, Attract and Grow the Membership, Articulate the value of FLTA and Encourage members to adopt ALTA's Best Practices.

In closing, thank you Jim Russick for your service and steering this association this past year as President. I am fortunate to have developed a friendship with you. The association is fortunate for all your years of service. Thank you Alan Fields for your leadership as our previous Executive Director. We all wish you the best in your new role. Welcome Alexandra Overhoff as our new Executive Director. Alex will be the person leading us through the sea of change we are facing.

I am honored this association places the trust in me to lead this year. I will strive to continue the great performance that has preceded me.

**Vincent J. Cassidy**

President

Majesty Title Services, LLC



## The Data Call is Important to You



I know that the Data Call for Agents is no one's favorite topic or way to spend time.

It would be easy (maybe even compelling) to ignore it, perhaps hoping it will go away, or that someone will come to their senses and do away with it.

Neither will happen, by the way.

OK, you say, it may not go away, but why should I care?

Let me take a few minutes of your time to suggest why this is important—no, critical---to you and to all of us.

We face an unprecedented scrutiny of our industry, both within our state and on a national stage. Criticism of our rates is frequent. Many say the rates are too high. It is clear to me and to most of us that these criticisms are based on an ignorance of what we do as an industry, the contribution we make to the integrity of the ownership of property and the real risks we take in the provision of the title insurance product.

This Data Call will provide a basis to clear that ignorance, and to set and justify the rates we charge, based on fact.

Here are my premises in justification for the work you must do to comply with the data call:

**The Agent Data Call is necessary to allow the proper setting of rates that you share.** Since as much as 70% of the premium collected goes to your bottom line, it is critical for all of us that the data about your business is captured and factored into the

calculation of the rates.

**It is time for meaningful data.** Our promulgated rates have not been changed in decades. The Office of Insurance Regulation does get data from the Underwriters on a regular basis, but our data as underwriters tells only part of the story of what is a proper rate.

**Your story as an agent has never been told.** The premium for the title policy is shared with you as an issuing agent to compensate you both for the work you do and the risk you take in producing the policy.

The bulk of the work necessary to take a transaction to a closing table, obtain the myriad things it takes to transfer an interest in real property and to insure that title, is done by you as the issuing agents and closing/escrow agents.

What you do is largely unknown to anyone outside of our industry offices, and the expenses you face and risks you absorb are likewise unknown or under-appreciated.

**This data call is the way to tell that story.**

This data call will capture the information about the business of running a title agency and the work that is done by you to allow for the orderly transfer of real property in Florida.

There are some key issues that this data call will capture and that I hope you focus on. Of course all of the information is important and requires your attention, but these two are, in my opinion, critical to what we will all learn from the data

**1. Losses you pay.** You are short a few dollars on the recording fees, or you need to pay a loss as a result of a mistake that was made. Maybe you have to re-record the deed or the mortgage. These real losses that you have been paying have NEVER been captured in a data call in this state. Schedule C of the Data Call provides you a place to capture this information and to educate all of us as to the actual costs in clearing title.

**2. The work you do.** You review the records, the search, and clear all the matters necessary to issue a policy or to get the transaction to the closing table. This Data Call also captures your time and expense of doing a closing. While unregulated, the closing fees collected affect your ability to survive as an agent, and the labor costs to provide this service is relevant to the overall picture.

So what will happen in the end? It is easy to speculate what could happen. It is possible that the data will show the rates are too low, it is possible it will show the rates are too high, or maybe they are not structured right, and so on.

What we do know will happen is that through the collection of this data year in and year out, when combined with the data from the underwriters a clear picture will emerge of what it takes to produce title insurance and close transactions.

Rates will be set correctly so that **both** the underwriters AND the agents are able to maintain their integrity and profitability.

Please participate, not only because it is mandatory and your license could be in jeopardy if you do not, but to meaningfully contribute to the betterment of our industry and the public we all serve.

## General Counsel

W. Theodore Conner | Attorneys' Title Fund Services, LLC



### Restoring Risk Structure for Title Insurers and Agents: Seeking the Return of the Economic Loss Rule



Recent case law arising in the property and casualty insurance field has created a threat to title insurers and their agents. Bills have been filed to legislatively distinguish title insurance and to return to insureds, title insurers and title insurance agents the rights and remedies previously enjoyed.

For thirty years courts have ruled that insureds are entitled to the protections provided by the title insurance contract, but only those protections, when insureds have sought remedies from insurers and agents beyond the terms of title insurance policies. Typically an insured would allege an agent was negligent in the evaluation of title leading to a title insurance policy or the title policy misrepresented the status of the title. Florida courts have historically ruled that when parties have entered into a contract, like a title insurance policy, they may only look to the terms of the contract if their expectations are not met. This doctrine is called the

economic loss rule and has been applied across the country. By application of this rule, courts have held that title insurers and title insurance agents were not liable beyond the terms of the policy for matters arising out of the title insurance policy.

In a case involving a property and casualty insurance agent, the Florida Supreme Court recently eliminated the economic loss rule in Florida except in the area of product liability. See *Tiara Condominium Association, Inc. v. Marsh & McLennan Companies, Inc.*, 110 So.3d 399 (Fla. 2013). Legal commentators have published articles indicating that claims of negligence will be made in actions previously limited to breach of contract. While title insurers and title agents continue to have legitimate defenses to allegations of liability beyond the contract, their viability is untested. There are strong public policy arguments to distinguish the title insurance industry.

Title insurance policies are unique among contracts and even other lines of insurance. For the protection of the public, the state requires all title insurance agents and insurers to issue policies containing the same coverage's at promulgated rates. Thus, Florida's Legislature and Office of Insurance Regulation have determined the appropriate remedies Florida's consumers require and a fair rate for that coverage. To permit recovery in addition to the remedies the state mandates, without additional compensation to agents or insurers, places the solvency of the title insurance industry, particularly



title insurance agents, at risk. Many small business title insurance agents, particularly in rural or underserved areas, may not be willing to accept the additional risk, thus reducing the competition that currently provides Florida consumers with excellent title insurance service and competitive rates for settlement services.

Rep. Kathleen C. Passidomo and Sen. Bill Galvano have recognized the threat the possible unintended consequences of the *Tiara Condominium* case represent to thousands of small businesses providing title insurance agent services through licensed title agencies and law firms. Rep. Passidomo filed HB 321 and Sen. Galvano filed SB 570. The bills seek to return consumers to the rights and protections enjoyed by them prior to the *Tiara*

*Condominium* decision. The bills also take the opportunity to conduct a little “housekeeping” in the title insurance chapter by clarifying certain provisions and deleting provisions made obsolete by prior legislation.

Both bills have enjoyed early success. As we go to press, HB 321 passed all committees unanimously, and has been placed on the House Calendar for a second reading. SB 570 passed unanimously in both its originally referred committees, and may be referred to one further committee.

Please tell your local Representatives and Senators that you support HB 321 and SB 570 and ask them to do the same.

# ARE YOU CERTIFIED?

**CLS and CLC tests June 21, 2014!**

**Applications are DUE APRIL 18, 2014 for this year's CLS and CLC tests.**

Go to [www.flta.org](http://www.flta.org), and Select the Certified Land-title Institute tab to access the information.



## FLTA LOBBY DAYS

### February 18 and 19, 2014



Lobby Days makes everybody smile! FLTA Governmental Affairs Chair **David Norris**, FLTA Executive Director **Alex Overhoff**, Florida CFO **Jeff Atwater** and FLTA President **Vince Cassidy**

Lobby Days provide a unique opportunity to gather in Tallahassee with fellow FLTA members, learn about the legislative process, meet with legislators and regulators, and communicate title industry messages.

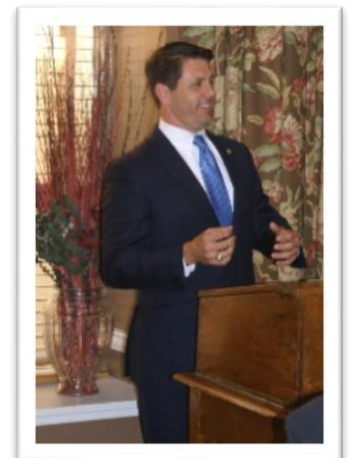
From the beginning of the conference, when FLTA President Vince Cassidy welcomed the approximately 30 FLTA member advocates who came together in Florida's capital on February 18<sup>th</sup> and 19<sup>th</sup>, and thanked them for their active support of the Association and of the industry, this year's Lobby Days were a great success! FLTA Government Affairs Chair David Norris introduced our keynote speaker, Florida's Chief Financial Officer Jeff Atwater, who inspired the crowd with his knowledge of the impact of the title and banking industries on Florida's improving economy. Representative George Moraitis, an attorney-agent, explained nuances in HB 805, a bill he sponsors this session which relates to statutory premium reserves, and HB 321, a bill he co-sponsors which relates to the economic loss rule. Ray Wenger, our regulator from Florida's Department of Financial Services, entertained attendees while discussing agent focused title issues, and Florida's Office of Insurance

Regulation's Peter Rice and Jeff Joseph spoke about and answered questions, mostly concerning the Data Call. Lobby Days would not have been as successful without the help of David Daniels, Agents' Section lobbyist, who set up meetings with legislators, and who provided attendees with an insider's view of this year's legislative "players", strategies and hot topics.

After I briefed the attendees on issues to discuss with legislators, including the Data Call Rule Ratification, the Data Call Rule Submittal Deadline Delay and the Economic Loss Rule, FLTA member advocates set out for their over 30 pre-set meetings with legislators. From all accounts, the meetings went well. Most legislators were well aware of title issues, and expressed their support. They were engaged, and asked thoughtful questions. In following up with legislators after Lobby Days, most noted they were grateful for the industry input, especially when their constituents delivered the message.

Lobby Days help FLTA become a known and reliable voice of title insurance in Tallahassee. Legislators rely on public input, and face to face meetings allow real and timely communication between citizens and their elected officials. Whether they are longtime members or relatively new to the game, every year our engaged members help FLTA become more effective as Florida's title insurance advocate, and Lobby Days is a powerful tool for the Association to promote the interests of our members.

Don't miss out! Make sure you are a part of FLTA's 2015 Lobby Days!



An informative speech given by Representative **George Moraitis**

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

**Patti Nameth** 1st Quality Title Ocala, FL  
**Tammy Bowers** A Clear Choice Title & Escrow of Osceola, LLC St. Cloud, FL  
**Karen Kohler** Access Title Agency, LLC Naples, FL  
**Nancy Licari** Accurate Closing Services Orlando, FL  
**Gregory Rideout** Acura Title Co. Tampa, FL  
**Jennifer Davila** All About Title, LLC Tampa, FL  
**Mark Mucci, Esq** All Property Title & Escrow LLC Coral Springs, FL  
**Gwen H Boutwell** Allstate Title and Escrow of NW Florida, Inc. Crestview, FL  
**Christopher Koziol** Altima Title, LLC Naples, FL  
**Wendi McAleese** American Government Services Corp Tampa, FL  
**Sherry Steele** American Home Title of Tampa Bay Tampa, FL  
**David Rankin** American Patriot Title Lutz, FL  
**Antoinette Hitchens** American Title Insurance Company Cape Coral, FL  
**Eva Mishkoff** Amerifirst Title Services Corp. Miami, FL  
**Ira Shapiro** Ashley Title Company North Miami Beach, FL  
**Lory Mitchell** Assured Title & Trust, Inc. Miami, FL  
**Mo Choumil** ATG Title Miami, FL  
**Kim Carpenter** Attorneys' Title Insurance Fund, Inc. Orlando, FL  
**Kathy Gallagher** Avex Title LLC Orlando, FL  
**Marc Silverman, Esq.** Bankers Title Clearwater, FL  
**Victoria Fiddelke** Bayshore Title Insurance Agency, LLC Tampa, FL  
**Reva Jean Bond** Beaches Title Services, LLC Jacksonville, FL  
**Elizabeth Labela** Bella Title & Escrow, Inc. Melbourne, FL  
**Raymond Biernacki, Jr.** Biernacki & Biernacki, P.A. Orange City, FL  
**Michael Leonard, Esq.** Boyle, Gentile, Leonard & Crockett, P.A. Fort Myers, FL  
**Brandie Bennett** Brick CityTitle Insurance Agency, Inc. Ocala, FL  
**Larry Stockton** Capstone Title, LLC Port Richey, FL  
**Teresa Hasenwinkel** Carefree Title Agency, Inc. Scottsdale, AZ  
**Kenya Diaz** Century Title Insurance Agency Coral Gables, FL  
**Bonnie Bridges** Chelsea Title of the Nature Coast, Inc. Spring Hill, FL  
**Allen Connell** Classic Title & Solutions, Inc. Saint Cloud, FL  
**Pennye Freeman** Clear Title of Northwest Florida, LLC Pace, FL  
**Jannet Rodriguez** Closings Unlimited, Inc. Miami, FL  
**Sandra McDermott** Coast Title Insurance Agency, Inc. Palm Coast, FL  
**David Norris, Esq.** Cohen, Norris, Wolmer, Ray, Telepman, Cohen, N. Palm Bch, FL  
**Douglas Baird** Collier Insurance Agency, LLC Naples, FL  
**LynnDee Snyder** Consumer Title & Escrow Services Clearwater, FL  
**Martha Ferguson** Consumer Title Services, LLC Coral Springs, FL  
**Jeanni Brown** Countywide Title & Escrow Corp Merritt Island, FL  
**John Le Tellier** Covenant Closing & Title Services, Inc. Palm Coast, FL  
**Crystal Lawyer** Crystal Settlement Services, LLC Fort Lauderdale, FL  
**Melisa Moisa** DataQuick Title City & State not given  
**Mary Gretel** Distinctive Title Services, Inc. Wellington, FL  
**Cheryl Herny** Dynamic Title Services, LLC Trinity, FL  
**Etelgive Zayas** Elite Land Title, Inc. Miami, FL  
**Cynthia Cohen** Empire Title Services, Inc. Aventura, FL  
**Barbara Pita** Excellence Title Agency, Inc. Doral, FL  
**Carole Susan Atchison Green** Executive Title Co. of Central Florida Winter Haven, FL  
**Kenneth Bronchick, Esq.** Expert Title Company Deerfield Beach, FL  
**Annabel Fernandez** Express Title Services Group, Inc. Miami, FL  
**Carol Ann Murphy** Family Escrow & Title, Inc. Boynton Beach, FL  
**Brenda Van Nest** Federal Title Insurance Agency, Inc. Rockledge, FL  
**Nicole Marie DiMarzo** First Equity Abstract Corp. Syosset, NY  
**Patrick Emrich** First Federated Title, LLC Tampa, FL  
**Warren Wilson Cook** First National Land Title Company, Inc. Ft Walton Bch, FL  
**Virginia Duggan** First National Title & Closing Services, Inc. Naples, FL  
**Danieth Bennett** First Signature Title, Inc. Lake Mary, FL  
**Bruce Napolitano** First Title Of America, Inc. dba All Florida Title Lake Mary, FL  
**Joseph Cash, Jr.** First Title Source, LLC Madeira Beach, FL  
**Rose Sheehan** Florida Title & Guarantee Sunrise, FL  
**Keri Lee, Esq.** Florida Title One, LLC Lehigh Acres, FL  
**Richard Fox, Esq.** Fox Partners Enterprise dba Mercury Title Company Lake Mary, FL  
**Cynthia Polster** Freedom Title & Escrow Company, LLC Lady Lake, FL  
**Ron Decelles** Genesis Title Company Brandon, FL  
**Maria Dellis** Genisy Title Inc. Palm Harbor, FL  
**Valerie Henry** Gold Crest Title Services Port Charlotte, FL  
**Joseph Kozel** Granite Software, Inc. Burbank, CA  
**Giselle Breto** Greenwich Title Services, Inc. South Miami, FL  
**Kimberly M Biggs** Gulf Coast Title Agency, LLC Pensacola, FL  
**Vanessa Jones-Pate** Gulfside Title Services, LLC St. Petersburg, FL  
**Vicki L. Hoover, CLC** H & S Title and Escrow, Inc. Destin, FL  
**Lillian ReDavid** Harvard Abstract, LLC Media, PA  
**Blake Hayward** Hayward Title Group Tallahassee, FL  
**Rick Schuster** Home Guardian Title Boca Raton, FL  
**William Poirier, Jr.** Home Loan Alliance Title LLC Tampa, FL  
**Maria Perez-Arche** Home Title Agency, Inc. Coral Gables, FL  
**Ron Platt, Esq.** Independence Title Insurance Agency, Inc. Delray Bch, FL  
**Pamela Allen** Jupiter Title Co., LLC Jupiter, FL  
**Margaret Dwyer, CLC** KeyStone Title Agency, Inc. Port Richey, FL  
**Cheri Hipenbecker** Knight Barry Title, Inc. Racine, WI  
**Michelle Gillum** Lakeland Title, LLC Lakeland, FL  
**Donna Cooney** Lakeside Title, Inc. Crescent City, FL  
**Stephen Collins** Land Title of America, Inc. Saint Augustine, FL  
**Carolyn Lawrence** Landmark Title Services, LLC Orange City, FL  
**Alan Sandler, Esq.** Lawyers Advantage Title Group, Inc. Altamonte Springs, FL  
**Eric Solomon, Esq.** Legacy Title & Escrow / Wollman Gehrke & Solomon, P.A. Naples, FL  
**Deborah Hammons** Liberty Title Company Winter Park, FL  
**Sharon Evans** Liberty Title Company of America, Inc. Port St. Lucie, FL  
**Laura Raposo** LSI Pittsburgh, PA  
**Devora Hirschfeld** Madison Title Agency, LLC Lakewood, NJ  
**Debra Currie** Manatee Title, LLC Hernando, FL  
**Sherri Heller** Market Title LLC Aventura, FL  
**Joseph Sutter** Mason Title & Escrow Company Wesley Chapel, FL  
**Sharon Deville** McGill Escrow & Title, LLC Destin, FL  
**Melanie Levine** Mellex Title Services, LLC Plantation, FL  
**Jonathan Auvil, Esq.** Meridian Title Co./Johnson, Auvil, Pratico & Chane, P.A. Dade City, FL  
**Jessica Hernandez** MiCasa Title Services, Inc. Davie, FL  
**Michael Trinkler** Michael A. Trinkler, P.A. Coral Springs, FL  
**Lisa Mitchell** Mitchell Land & Title, Inc. DeFuniak Springs, FL  
**Cheryl Mosley** Mosley & Wallis Title Services, Inc. Melbourne, FL  
**Kay Geiger** Neighborhood Title Group Seaside, FL  
**Connie Hall** NewCastle Title Services, Inc. Kissimmee, FL  
**Evie Peacock** North Florida Title Company Tallahassee, FL  
**Lisa Hillman** North Port Title LLC North Port, FL  
**David Fohr** NVR Settlement Services, Inc. Charlotte, NC  
**Patricia Stokes** Ocala Land Title Insurance Agency, Ltd. Ocala, FL  
**Patricia Horn** Oceanside Title & Escrow, Inc. Vero Beach, FL  
**Gayle Hurst** Old South Land Title Co. Shalimar, FL  
**Jessica Peel** Olde Towne Title & Guaranty Agency, LLC St. Augustine, FL  
**Marolyn Strietelmeier** Optimum Title, LLC Bradenton, FL  
**Charles Chacko** OS National, LLC Duluth, GA  
**Cindi Owen Briley** Owen Title Company, Inc. Tallahassee, FL  
**Robin Williams** Palmetto Park Title Services Boca Raton, FL  
**Pam Gesell** Paradise Title of St. Augustine, LLC Saint Augustine, FL  
**Sandra Carpenito, CLS, CLC** Paradise Title, LLC Sebastian, FL  
**Carol Eubanks** Partnership Title Company, LLC Pensacola, FL  
**Karen MacDonald** Pasco Title, LLC New Port Richey, FL  
**Ryan Sulte** Pendleton Title Group Tampa, FL  
**Ellen Peoples** Peoples Title of South Florida, Inc. Tamarac, FL  
**Victoria Doran** Perfect Title & Escrow, Inc. West Palm Beach, FL  
**Judith Peraza** Perland Title & Escrow Services Corp Miami, FL  
**Evelyn Cary** Pinellas Park Title Co. Pinellas Park, FL  
**Leah Negri** Platinum National Title, LLC Clearwater, FL  
**Brian Reynolds** Ponte Vedra Title LLC Ponte Vedra Beach, FL  
**Linda Schwartz** Professional Resource Group, Inc. Mount Dora, FL  
**Katherine Perdomo** Professional Title & Escrow of South FL Miami, FL  
**Marlene Benner** Prominence Title & Escrow, LLC Orlando, FL  
**Michael Rapf** Property Transfer Services, Inc. North Palm Beach, FL  
**Karen Mundy** Real Property Services, Inc. Punta Gorda, FL  
**G. Donald Whalen, CLS** Reliant Title Group, Inc. DeLand, FL  
**Marielena Kroger** Republic Land & Title, Inc. Palm Harbor, FL  
**Lisa Pfrenger** Resource Title National Agency, Inc. Independence, OH  
**Thomas Runyan, Jr.** Runyan Law Firm, PA Fort Lauderdale, FL  
**Trinity Hansen** Safe Harbor Title Company Fort Myers, FL  
**Angela Florian** Sandbar Title, LLC Fort Myers, FL  
**Deborah Solloway** Security Title & Abstract LLC Fort Myers, FL  
**Patricia Hazel** Security Title Company Dunedin, FL  
**Lydia Esther Balda** Select Title Service, Inc. dba First Service Title Agency Miami, FL  
**Sharron Faulkner** Shore to Shore Title LLC Delray Beach, FL  
**Cindy Petzel** Shoreland Title Inc. North Port, FL  
**Zebulon Haney** Signature Title Florida Partners, LLC Stuart, FL  
**Marta Lajas** Smart International Title, LLC Orlando, FL  
**Charlene Byrd** South Shore Title, Inc. Wellington, FL  
**Anthony Senerchia** SouthCoast Title & Escrow Inc. Coventry, RI  
**Nancy Sloan** Southern Security Title Services, Inc. Citrus Springs, FL  
**Grace Anne Payne** Southern Title Services Of Tampa Bay, Inc. Lutz, FL  
**Jeanine Wells** Stewart Vacation Ownership Deerfield Beach, FL  
**Charles Geary** Sun Title Agency, LLC Stuart, FL  
**Jamie Temples** Tallahassee Title Group, LLC Tallahassee, FL  
**Donna Sorgenfrei** Tampa Title Company Tampa, FL  
**Christopher Clarke** Terra Nova Title & Settlement Services Washington, DC  
**Mark Wright** The Closing Agent, Inc. Orlando, FL  
**Erin Walters** The Closing Connection, Inc. Wellington, FL  
**Melissa Peterson, CLC** The Title Company Lehigh Acres, FL  
**John Gullett, II** Title America Real Estate Closings Jacksonville, FL  
**Barbara Peddicord** Title and Abstract Agency of America, Inc. Tampa, FL  
**Joanne Villano** Title Chain, Inc. Palm Coast, FL  
**Robert Mazur** Title Champs of Florida, LLC Palmetto Bay, FL  
**Richard Adams** Title Partners of Florida, Inc. Hialeah, FL  
**Berta Garcia** Title Professionals of South Florida, Inc. Doral, FL  
**Yomarie Fernandez** Title Specialists of the Gulf Coast, Inc. Fort Myers, FL  
**Rogy Verghese** Title Warehouses of America, Inc. Orlando, FL  
**Milinda Garner** Total Trust Accounting Service, LLC Clearwater, FL  
**Barbara Engel** Town & Country Title Guaranty of Hollywood Pembroke Pines, FL  
**Dawn Betancourt** Town Square Title, Ltd. Orlando, FL  
**Quin Stevens** Town Title, Inc. Jupiter, FL  
**Tracy Townsend** Townsend Title Insurance Agency, LLC Cape Coral, FL  
**Sue Roedl** Tri-County Land Title & Escrow Co. Lady Lake, FL  
**Jill R. Eby** Tropic Title Services, Inc. Spring Hill, FL  
**Wendy DePinto** Tropical Land Title, Inc. Jupiter, FL  
**Karen Darley** Tropical Title Insurance, LLC Palm Harbor, FL  
**Paul Mascia, Esq.** Trust Title Group, LLC Orlando, FL  
**Elizabeth L. Blackwelder, CLC** Trust Title Solutions, Ltd Palm Harbor, FL  
**Aldo Saavedra** Tuscany Title Corporation Miami Springs, FL  
**Fred Senesi** U S Title & Escrow, Inc. Ft Lauderdale, FL  
**Missy Malloy** Urban Settlement Services, LLC Pittsburgh, PA  
**Patricia Del Pino** Venetian Title Services, Inc. Doral, FL  
**Gloria Guzman Thomas** Vero Beach Title Assoc., LLC/Lawyers Title Agency Vero Beach, FL  
**Mary Bullock** Wilson Title Services, LLC Kissimmee, FL



Ask us about an **FLTA MEMBER** discount!!!

## Florida Data Call Agency Activity Tracking

As many agencies are discovering, the manual tracking of all your agency activities is quite tedious and time consuming. Whether you are using OIR's Data Call Report (available at [www.flta.org](http://www.flta.org)) or you have created a spreadsheet, there is still manual entry and compilation of the hundreds and thousands of individual time entries that accumulate over the course of a year.

TimeTracker software has been developed specifically as a solution for Florida title agencies' needs to track activities on Schedule B of the Florida Data Call. TimeTracker is a simple, efficient and accurate application that can run on all of your windows-based computers.

The goal of the Florida Title Agency Data Call is to gather accurate information. Though you are allowed to submit estimates for the time spent on your work, time estimation may adversely affect the findings of the OIR. TimeTracker is the solution that eliminates the need for estimation and manual time entry. It's real-time tracking made easy!

- Independent Software – can be used regardless of the closing software your agency uses
- Data is stored on your own computers
- Great management tool – see where your employees are actually spending their time
- Track time based on one or two of the Agent Activity Categories and the software will automatically split the time entry for you
- Generate reports by activity, file number, employee and Schedule B category
- Provides backup for your submission to OIR



For more information:

[www.timetrackerllc.com](http://www.timetrackerllc.com) | [info@timetrackerllc.com](mailto:info@timetrackerllc.com)

### Agent Activity Categories

- I. Search
- II. Examination of Documents
- III. Determination of Insurability
- IV. Curative Efforts
- V. Closing



## LEGISLATIVE UPDATE



March 2, 2014 was the first day of Florida's 2014 Legislative Session and several Committees and Subcommittees have voted on issues which affect Florida's land title industry. Topics covered in hearings during the first weeks of Session included the Data Call Rule Ratification and

Date of Submittal, Insurance Premium Tax, Economic Loss Rule, Agent in Charge and Lower Statutory Premium Reserves, among others. At the Federal level, Congress recently voted on Flood Insurance, an issue which directly affects the health of Florida's real estate and title industries.

### DATA CALL RULE RATIFICATION

Florida's Office of Insurance Regulation ("OIR") is required to collect data from title insurers and agents to insure the Office sets fair and accurate promulgated rates for title insurance. Over the course of more than three years working with the title insurance industry, FLTA, the Florida Bar's Real Property, Probate and Trust Law Section, OIR promulgated Rule 69O-186.013, F.A.C., which establishes a procedure by which title insurers and agents will report required information to be used for this purpose. The Rule passed in the House Rulemaking, Oversight and Repeal Subcommittee as HB 7097, and we have been assured that the Senate version will be in committee soon. Following Senate passage, the Legislature votes on the Rule.

### DATA CALL RULE SUBMITTAL DEADLINE

The Rule requires agents and insurers to submit information in a specified format. As written, the deadline for submittal of the Data Call information is March 31 of the year following the year of data

collected. After the Rule was completed, the drafters of the bill noted that because Federal tax returns are not due until April 15, much information required for the Data Call will not be available by the submittal deadline. The March 31 submittal deadline also created other compliance difficulties related to year end audits and tax return preparation. To fix these problems, HB 321, SB 462 and multi-topic insurance bills HB 565, SB 570 and SB 1260 seek to delay the deadline for submittal to May 31. One such bill, HB 321, sponsored by Representative Kathleen Passidomo, passed all committees unanimously, and has been placed on the House Calendar for a second reading. Another glitch-fix bill, HB 565, passed unanimously in its first two subcommittees, and has been temporarily postponed in its third committee. More glitch-fix bills include SB 570, SB 462 and SB 1260. SB 570 passed unanimously in both its originally referred committees, and may be referred to one further committee, and SB 462 and SB 1260 have not yet been placed on committee agendas.

### ECONOMIC LOSS RULE

In addition to addressing the glitch with the deadline for Data Call information submittal, HB 321 and SB 570 also legislatively address *Tiara Condominium Association v. Marsh & McLennan*, a 2013 decision of the Florida Supreme Court which limits the "economic loss rule" to product liability cases. The economic loss rule is a doctrine which states that damages for economic loss are not recoverable based on tort theory when unaccompanied by physical property damage or personal injury. To the title insurance industry, historically this has meant that remedies under title insurance policies are limited to the terms of the policy. Last year's *Tiara* decision, which limits the economic loss rule to product liability cases, effectively exposed title insurers, agents and searchers to tort claims arising solely under the provisions of title insurance contracts. HB 321 and SB 570 reinstate application of the economic loss rule to title insurance by providing that only contract remedies are available for the breach of duty which arises solely from the terms of a contract of title insurance or certain other instruments, such as

closing protection letters, issued by a title insurer. The bills also include a number of “housecleaning” matters by clarifying certain provisions and deleting provisions made obsolete by prior legislation. Again, HB 321, sponsored by Representative Kathleen Passidomo, passed all committees unanimously, and has been placed on the House Calendar for a second reading, and SB 570 passed unanimously in both its originally referred committees, and may be referred to one further committee.

For an excellent discussion of the risks and proposed solutions related to the economic loss rule as it applies to the title industry, be sure to read HB 321 drafter Ted Conner’s *article Restoring Risk Structure for Title Insurers and Agents* on page 4.

#### AGENT IN CHARGE

Along with the Data Call Date of Submittal Delay and other topics, HB 565 and SB 1260 address “agent in charge”, SB 570 (and agency name issues both), also. These bills provide rules requiring designating the agent in charge of primary and branch locations who will be legally responsible for the misconduct or violations of the code. The bills prohibit an insurance agency from conducting insurance business at a branch location without a designated agent in charge who must be physically present on the premises when insurance business is conducted at that location.

#### STATUTORY PREMIUM RESERVES

Designed to address the financial condition of insurers writing insurance in Florida, the Legislature has established reserve requirements intended to cover all known and unknown liabilities including all unpaid losses, claims and allocated loss adjustment expense for which title insurers may be liable. Additionally, title insurers are required to reserve a Statutory or Unearned Premium Reserve.

Florida’s current reserve requirement is significantly higher than the requirement for any states in which a national title insurance company is domiciled. HB 805, SB 758 and SB 570 lower the Statutory or Unearned Premium Reserve requirements for insurers domesticated in Florida to a minimum of

6.5% of premium and fees, and accelerate the time to release reserves. This lower reserve requirement applies only to companies which have at least \$50 million in surplus. SB 805 passed unanimously in its first of two committees and is now in Regulatory Affairs. SB 758 also passed unanimously in its first of two committees and is now in Commerce and Tourism.

#### INSURANCE PREMIUM TAX

Historically, title insurers have paid tax on 100% of title insurance premiums collected, even though, as per 627.782(1) Fl. Stat., agents retain 70% of the premiums collected. SB 310 and HB 657 seek to amend current law so that the “tax insurers pay shall not apply to any portion of the premium retained by a title insurance agent or agency”. The final language of the bills, as written, was changed to address concerns that the former language changed the definition of “premium” in a manner which is potentially harmful to agents. On March 7, 2014, at a special Board meeting called to discuss only these bills, the Board voted to support the bills, as revised. The Senators in Banking and Insurance passed SB 310 10-1. Determining that issues in this bill have financial impact, the Senators determined that it should be heard in Appropriations Committee. Originally referred to Banking and Insurance, Judiciary and Community Affairs, reference to Community Affairs has been removed, and replaced with reference to Appropriations. SB 310 is now in Judiciary. HB 657 passed unanimously in its first of two committees, and is now in Commerce and Tourism.

#### FEDERAL FLOOD INSURANCE LEGISLATION

The Biggert-Waters Act of 2012 (“Biggert-Waters”) caused Federal Emergency Management Agency (“FEMA”) backed flood insurance rates to skyrocket, in some cases by 4,000%, by eliminating federal subsidies that had previously been in place for those rates. The net effect threatened another recession in the real estate market, especially in Florida, bringing home sales to a screeching halt in affected areas. Although we are a state association, issues at the federal level sometimes require our direct participation. Arguably, this is the case with

flood insurance. In support of Federal relief measures in the House and the Senate, the FLTA Board sent letters and joined in a letter signed by a coalition of state and national groups to Congressional leadership and Florida members, encouraging passage of HR 3370, the “Homeowner Flood Insurance Affordability Act of 2013. The efforts culminated in the passage of HR 3370. Earlier this year, the House passed the bill 306-91, and last week, the Senate approved the bill 72-22. As we go to press, this bill awaits the President’s signature.

Among other provisions, this bipartisan legislation includes offsets for the costs of HR 3370, which would limit annual policy rates, forces FEMA to certify its mapping methodology, and sets milestones for FEMA to carry out a flood insurance rate affordability study. Rather than implementing the

Biggert-Waters requirement that premiums increase to actuarially sound rates over five years, HR 3370 caps premium increases at eighteen percent a year by “grandfathering” homes originally built to code, but, due to updated FEMA maps, later found to be at a higher flood risk. HR 3370 also allows new home owners to keep sellers’ federally subsidized policy rates, instead of immediately paying actuarially sound rates required by Biggert-Waters. For those who bought their homes after Biggert-Waters was enacted in 2012, HR 3370 provides for rebates for the massive increases in premiums paid to date, reduces those increased rates, and caps future rate increases at fifteen to eighteen percent a year. For second homes in a flood zone and homes which have flooded repeatedly, premiums will increase by twenty five percent a year until they reach actuarially sound rates.

## 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 who have renewed their support for the 2014 contract year:

### **Chairman’s Club (\$1,000 or more)**

Fidelity National Title  
Old Republic National Title

### **President’s Club (\$500-999)**

Estate Title of St Augustine  
Sue Geigle

### **Ambassador’s Club (\$250-499)**

### **Gold (\$100 – 249)**

We would be remiss if we did not mention there are companies that contribute to the fund on an annual basis. ALL of these companies make annual contributions and are supporters of the Agents Lobby Fund. Look for your company’s name to be added in the coming newsletters.

## Examine This!

How is a Collateral Assignment of Mortgage different from an Assignment of Mortgage?



Have you ever seen a document titled *Collateral Assignment of Mortgage*? Do you know what this is and how should it be addressed?

First, let me say that you can title a document anything; some of you may have heard me say, “You

can title the document ‘Ham Sandwich,’ but that doesn’t make it one.” A careful reading of the document is always required – and quite often people will change the title of the document thinking this is all that is required. This just isn’t so.

So what is a Collateral Assignment?

Let’s consider this scenario. Barney buys a home from Fred; Fred offers seller financing and takes back a mortgage on the home, making Fred (the “First Lender”) in our example. All goes well, Barney is making monthly payments to Fred, but Fred needs some more cash and goes to his local Substantial Bank branch to take out a loan. Substantial Bank, responding to tightened loan standards wants some collateral for the loan. Fred says: Well, I no longer own the home, but I have this mortgage from Barney and he’s been making payments on time for several years, so Fred pledges the payments that Barney is making under the Mortgage to Substantial Bank (“the Second Lender”) This pledge of the right to receive payments under someone else’s mortgage then becomes the security for the borrower’s new loan. Since the balance owed by Barney is more than Fred is borrowing, Substantial Bank promises to release the collateral when they’ve been repaid with interest.

The instrument used to pledge those payments (and the underlying mortgage asset) is called a Collateral Assignment of Mortgage. This document, when recorded, gives notice that another entity (the Second Lender) claims an interest in the collaterally assigned mortgage belonging to the First Lender. Well crafted collateral assignments will set out that all payments are to be made to the First Lender until an event of default has occurred and the collateral assignee makes demand for payments. The First Lender will also collaterally assign the promissory note to the Second Lender and deliver physical possession of the Note.

Okay, but who do you request the payoff from: the First Lender (in our example, Fred) or the Second Lender (the collateral assignee, in our example Substantial Bank?) And who has authority to satisfy the mortgage? As always, you must read the instrument to determine who has rights to receive payment and issue satisfactions (that highlights the danger of renaming a document a “Ham Sandwich” Changing the name at the top doesn’t change the detail of who gets paid). You basically have two lenders with some interest that you have to deal with in order to release the mortgage and satisfy the requirements of your commitment.

That said, a payoff should be requested from BOTH the First Lender and the Second Lender (collateral assignee). If the two lenders haven’t coordinated well, you may receive what appears to be conflicting requirements and even different amounts. It is not uncommon to receive a payoff from the second lender (collateral assignee), stating an amount that is less than the full payoff due under the mortgage -- this amount will often reflect what the first lender still owes to the second lender. The Second Lender’s payoff may or may not instruct that and the remaining balance is to be paid to the first lender. This creates a danger that you will close and only collect the lesser amount – leaving your buyer with an unsatisfied mortgage and you with an ugly claim. Just as with escrow instructions, you should always make certain that both lenders see the instructions from the other and have given you “coordinated”



payoff information and directions. If there is any doubt, go back and seek clarification.

While the Mortgage may remain with the original lender if there has been no default, the collateral assignee still holds the note, and therefore the collateral assignee must either execute a Satisfaction of Mortgage or return the note to the original lender, who should return it to your seller. There are two paths that may be followed when you are attempting to obtain the release of a mortgage that has been collaterally assigned; they are (in order of both ease and my preference):

1. Obtain a satisfaction of mortgage from BOTH the original lender and the collateral assignee. This is because they both have an interest in the mortgage being satisfied, and as such, would be required to release same; or
2. Obtain a Collateral Assignment from the collateral assignee back to the original lender. Then get the Satisfaction of Mortgage from

the original lender like you would normally have done.

As always, please consult your underwriter whenever there is a question on just how something should be addressed.

I hope this is of use to at least some you; I will now step down from my soap box.

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

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



## JOIN AN FLTA COMMITTEE!

Have you been waiting for the right time to be more involved with FLTA Committee work? Committees you may be interested in, Governmental Affairs, Education and Membership.

**That time is now!**

Contact [alex@flta.org](mailto:alex@flta.org) to find out how you can help shape and carry out FLTA initiatives!

# Making Sense of New Regulations isn't Easy.

## **SoftPro Can Help.**

In an industry filled with constant regulatory changes, understanding these changes and how they affect your business can be a daunting task. You need a software partner that is working alongside you to help make sense of everything. As the nation's leading provider of closing and title software, you can count on SoftPro to deliver state-of-the-art technology that is always current with the latest industry regulations and requirements.



Call **800-848-0143** for a **FREE 30 DAY TRIAL** or visit [www.softprocorp.com](http://www.softprocorp.com).

