

Tallahassee Report

2017
Issue #2

Serving Title Professionals throughout Florida

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A Message from the President

Karla Staker | Fidelity National Title Group



President's Address

It is hard to believe that the first quarter of 2017 has already come and gone! The Florida Land Title Association has had a busy three months promoting the interests of Florida title agents and insurers. Here are some of the highlights.

In January, FLTA held its annual Lobby Days event in Tallahassee. Approximately thirty-three FLTA members attended. Florida Insurance Commissioner David Altmaier addressed the participants, expressing his interest in our industry and demonstrating his intention to engage in an open dialogue with our members on regulatory issues. Our members visited with numerous legislators, advocating in support of several key bills. Our advocacy included support of: (a) estoppel reform to make much needed improvements to the process of obtaining property association estoppel certificates; (b) extending the

statute, currently set to expire on October 2, 2017, that exempts from the Sunshine Law proprietary business information submitted by title insurance agencies and insurers in the annual data call; and (c) a re-write of the ownership and encumbrance report statute and the plat certification statute. The 2017 Legislative Session began on March 7 and ends on May 5. Our Governmental Affairs and Judiciary Committee is continuing to monitor bill filings during the session for any bills that could impact our industry.

In February, FLTA presented a webinar on the Fourth Revised Mutual Indemnification Agreement. Our one-hour webinars, which are free for FLTA members and a convenient way to obtain CE and CLE credit, are very popular. We are averaging 335 members and 8 non-members at each webinar. Be sure to attend our next webinar, [Facilitating a Successful Closing](#), which will be held on April 18. Our terrific presenters deserve a lot of credit for the success of the webinars.

In March, FLTA hosted lunch and learns on cybersecurity in Maitland, Jacksonville and Miami. We were delighted to have FBI Special Agents from the FBI's Cyber Unit speak at the events. The Special Agents offered tips on detecting, avoiding and responding to cyber threats. I encourage those who were unable to attend, to visit the Cyber Unit's website at www.fbi.gov/investigate/cyber to learn how to better protect your company from the growing threat of cybercrime. These

events were part of an initiative by the Membership Committee to offer programs around the state for our members. [A fourth cybersecurity presentation will take place on Friday, April 7, in Tampa.](#)

Last, a search for a new FLTA Executive Director is well underway. A search committee appointed by the Board of Directors advertised the position in several publications and has received resumes from numerous impressive candidates. A first round of interviews has been held and additional interviews are planned. The Executive Director has many roles, including overseeing our membership, committees, advocacy, publications, meetings, sponsorships, budgeting and financial affairs. Finding the right person to lead FLTA is a top priority of the Board as we move into spring.

Education Committee Charles Ferguson, CLS | First American Title Insurance Company



Hello all! The recently formed Education Committee has had a couple of great conference calls and things are proceeding nicely. Recently, software was discovered that will help the Committee achieve its goal of creating a “hands-on” approach at training prospective employees to become searchers/examiners. The software will allow companies to have prospects sit and follow at their own pace and create their own basic reports. The material will not be company or brand specific as it is meant to teach people the absolute basics in searching. The nuances each company has in place will come down later as the prospects continue moving on. More on the program to follow at a later date.

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THE 2017 REVISIONS TO THE FLORIDA REALTORS/FLORIDA BAR RESIDENTIAL CONTRACT FOR SALE AND PURCHASE

Revised and clarified language in the 2017 FAR/Florida Bar Residential Contract for Sale and Purchase will be of interest to title agents. The revised contract is currently scheduled to become widely available on April 4, 2017 and will contain the words "Rev. 4/17" on the last line of each page. Many title agents will find the revision clarifying the definition of municipal lien search in the last sentence of paragraph 9(c) to be helpful as the definition does not include open building permits which has been a source of contention in some areas of the state.



THE SIGNIFICANT REVISIONS ARE:

5(b) Extension of Closing due to Force Majeure

Timeframe for closing extension due to extreme weather has been lengthened but is now described in Standard G. Force Majeure. Please see Standard G for a full explanation.

8(b) Financing

New terms and default timeframe:

As most residential lenders are no longer issuing traditional loan commitments, the term commitment has been removed from the contract. Loan Approval has replaced the previously used term Loan Commitment. Loan Approval Period has replaced the previously used term Loan Commitment Date.

Default date for Loan Approval Period is changed from 45 days back to 30 days. The default timeframe was reduced because TRID regulations have not prevented most lenders from giving Loan Approval within the shortened time.

8(b)(i) Loan Approval does not need to be in writing. (Previously the contract required the commitment to be written.) An approval which requires Buyer to sell a property is not considered Loan Approval for purposes of this contract.

Diligent effort - The diligent effort Buyer must put forth when seeking Loan Approval is now defined in part. Definition includes: Buyer timely providing documents, information, payment of fees and charges per lender requirements. Buyer's failure to use diligent effort constitutes a default.

8(b)(ii) Buyer's consent for sharing information - Buyer authorizes Closing Agent to disclose to Seller and Brokers both preliminary and fully executed Closing Disclosures and settlement statements. This new provision should eliminate the problem of the seller or their agent demanding copies of these documents you previously could not provide due to privacy regulations. However, any lenders instruction stating these documents are not to be distributed must be followed.

8(b)(iii) If Loan Approval is obtained - Buyer is to provide written notice to Seller promptly upon obtaining Loan Approval. Promptly means to do without delay and with reasonable speed.

8(b)(iv) If Loan Approval is not obtained - Buyer may provide written notice to Seller by expiration of Loan Approval Period, if Buyer is unable to obtain the loan. This notice may be given earlier than expiration of Loan Approval Period if Buyer has used diligent effort but is unable to obtain the loan contracted for. The buyer is not required to continue to apply to multiple lenders once it becomes clear earlier than the expiration of Loan Approval Period that it is not possible for Buyer to secure the loan contracted for.

Contents of written notice that Loan Approval not obtained -

In Buyer's notice that Loan Approval was not obtained, Buyer may either: (a) terminate the contract or (b) waive obtaining Loan Approval. If Buyer waives obtaining Loan Approval, Buyer remains obligated to proceed pursuant to the terms of the contract.

Why Buyer may waive obtaining Loan Approval - Buyer may decide to waive Loan Approval if Buyer (1) does not need the financing contracted for to close the contract or (2) believes that Loan Approval is forthcoming although it was not obtained timely. Should Buyer waive Loan Approval, the provisions set forth in Paragraph 8(b)(vii) will continue to apply. (This is because only Loan Approval is waived, not the financing contingency.)

8(b)(v) Failure to provide written notice described in 8(b)(iii) or (iv) -

The contract will go forward as if Buyer did obtain Loan Approval if a written notice described above is not provided by expiration of Loan Approval Period to Seller. This puts the deposit at risk if Buyer does not thereafter close, unless: (1) Seller terminates the contract by giving Buyer written notice no later than 3 days after expiration of Loan Approval Period; or (2) failure to close is due to matters set forth in 8(b) (vii).

(This is a significant change from the previous financing provision. In general, prior to this revision both parties had the right to terminate the contract up to 7 days prior to Closing, if Buyer failed to obtain Loan Approval under the previous contract, regardless whether there was written notice given by Buyer.)

Why Seller may desire to terminate the pending contract within the 3 days after expiration of Loan Approval Period, if Buyer fails to provide the written notice - Seller may want to terminate if Seller (1) has another serious potential buyer, a better offer, or a backup offer or (2) does not want to wait until Closing to return the property to active status in the multiple listing service, or (3) isn't interested in claiming an insignificant or small deposit.

8(b)(vii) Return of Buyer's deposit -

Because failing financial institutions are no longer common, this was removed from the list of items that would result in a Buyer receiving their deposit back, if their loan did not close.

9(c) - Title Evidence and Insurance - The contractual term municipal lien search, which appears in Paragraphs 9(a), 9(b) and 9(c)(iii) has been more clearly defined. When a municipal lien search is performed it may include uncovering municipal and county ordinance violations which upon further action could result in liens on real property, reviewing whether there are unpaid municipal or county service charges for assessments for water, sewer, waste, gas, electric fees and discovering municipal special assessment liens recorded in an Improvement Lien book but not recorded in county public records. These are all matters provided for in Chapter 159 and Chapter 170 Florida Statutes.



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- **This term does not include building permit searches which reveal open, expired permits or unpermitted structures, as these are not matters that impact title. Instead, in locales where building permits searches are performed, the contract clarifies that they be conducted within the Inspection Period, and not by Title Evidence Deadline, which typically occurs later in the process.**

Paragraph 10 Disclosures –

10(b) Permits Disclosure - Where Seller discloses to Buyer that there are improvements on the property that are missing permits, Seller is now obligated to provide Buyer with plans and information Seller has in Seller's possession regarding the improvements. Seller may have these documents and information if a previous owner provided them to Seller, or where the Seller is the one that made the improvements.

10(i) FIRPTA

Housekeeping change- two words deleted from the title of subparagraph.

10(j)- Seller Disclosure - A Seller who has been notified by a governmental entity that there is a currently uncorrected building, environmental or safety code violations on the property is obligated to disclose same to Buyer in writing. The written component of the disclosure is new, not the disclosure requirement itself.

Paragraph 12 (d) Permits -

(i) Permit Inspection - If in Seller's possession, Seller is to provide plans, information, and documents to Buyer of property improvements missing closed permits. (This obligation stems from Buyer discovering missing closed permits during the Inspection Period while the new, similar obligation described in Paragraph 10(b) is one that arises when it is Seller who discloses to Buyer that there is a missing permit.) It is logical that this information will be helpful to Buyer in contemplating the purchase.

(d)(ii) Close out permits - Seller will now close all needed permits identified by Buyer during Inspection Period, if costs do not exceed negotiated cap. (This was implied but not previously stated.)

Standard G. Force Majeure - New time frames apply when transaction involves Force Majeure. Closing may be extended up to 7 days once insurance becomes available and closing services are restored following the Force Majeure. Previously the contract provided for an extension up to 3 days. In the event Force Majeure delays performance of the contract, the parties are now bound to the contract up to 30 days after Closing Date. Previously, the timeframe to extend performance under the contract after a Force Majeure was a negotiable term with a default of 14 days after Closing Date.

Standard I. – Closing Location; Documents and Procedure –

(i)Location - Contract now specifies that Closing can take place outside of the county where the Property is located if agreed to by parties.

Also, now there is a reference to conducting closings by overnight courier. This addresses out of town buyers who are required by their lender to sign documents on the Closing Date and thereafter send documents to the Closing Agent by overnight courier.

Subparagraph (iii) FinCEN - Now Buyer has an obligation to provide Closing Agent with information necessary to complete IRS Form 8300. This is due to Financial Crimes Enforcement Network (FinCEN) requirements that currently apply to certain title insurance underwriters for specific high end transactions in Dade, Broward and Palm Beach counties.

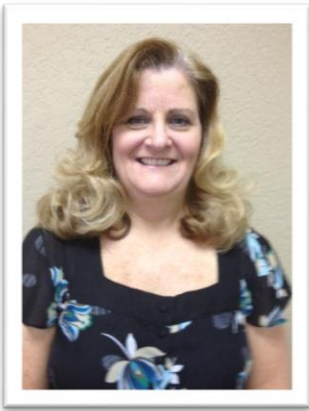
Standard K. Proration's -Words rearranged to clarify concept that when prorating taxes, all possible exemptions and discounts will be applied. Previously this applied if using current year's taxes.

Standard T. Loan commitment - Deleted Standard - Removed definition of Loan Commitment, which was derived from a statutory definition of this term because the term "commitment" has been deleted from Paragraph 8(b).

Standard V. FIRPTA - Removed some redundant language directing the parties to seek specialized advice. Removed reference to the \$300,000.00 exemption because specialized advice should be sought if an exemption is claimed as buyers may suffer significant harm if the terms of the exemption are violated. Eliminated Buyer's discretionary right to accept Seller's proof of non-foreign status. Proof of non-foreign status, instead should comply with certification outlined in the contract assuming Buyer is not aware that the certification is false.

CLT Institute Council Chair

Marcia Cameron, CLC/CLS | First American Title Ins. Company



Spring has sprung and our beautiful Florida beaches are calling my name!

The Certified Land Closer and Certified Land Searcher exams will be given on June 10, 2017. Please encourage those who would be good prospects to apply. The application deadline is April 14, 2017. I know we're all busy, but please send in the applications as soon as possible. The secretary will greatly appreciate your doing so. I would like as many as we can get to sit for the exam this year and to join all at the convention in Orlando.

Whether you are a closer, searcher or examiner, please take a moment to look over the information on the [Certified Land Title Institute page](#) of the FLTA website. On top of all the other benefits, you will have the distinct honor of being recognized at our annual convention in November.

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

Click [HERE](#) to order The Basic Title Insurance Handbook with the Booth Supplement Chapters.



Test Your Title Expertise

1. Tina Title Agent is reviewing a deed. The legal description reads as follows: That part of the plat of River acres, Plat Book 42, Page 39, Public Records of Highway County, Florida, more particularly described under the property appraiser's parcel identification number set forth at the top of this deed. For purposes of conveying a specific lot on the plat the legal description is sufficient.
True False
2. Now Tina is reviewing an individual's power of attorney for the sale of a lot in Cape Freedom. The power of attorney was executed in a foreign country. Tina decides that the power of attorney is fine for conveying the lot, except that no witnesses appear on the power of attorney. The power of attorney and its execution complied with the laws of the foreign country, and Tina has been provided with an opinion of counsel from the foreign country that concludes that the power of attorney is valid without witnesses. Based on the current Florida power of attorney statute, Tina may rely on the power of attorney.
True False
3. This time Tina is reviewing a power of attorney to be used for the closing. The husband is the attorney in fact for the wife. Before closing Tina learns that the sellers have filed for divorce. Tina reviews the power of attorney again, but does not find anything addressing dissolution of marriage. Based on the current Florida power of attorney statute, Tina may rely on the power of attorney.
True False
4. A deed names Rachel Carson Vila as grantee. Later Rachel conveyed out by deed spelling her name Rachel Carsen Vela. Tina thinks the different spellings may not be disregarded without a statement in the deed or by separate affidavit that these are one and the same person. Tina is correct.
True False
5. For at least seven years from issuance of the policy, a title insurance agent must retain evidence of title search, title examination and a record of actual premium charged for issuance of the policy and any endorsements.
True False



Keep reading for the answers!

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Agents' Section Chair

Timothy Steele | North American Title Company



Dear Fellow Agents,

As many of you may have heard, our Board voted unanimously on a new Agent Section Vice Chair, Nancy Baumann. Nancy has been in the title world for more than 30 years, and is the owner of Sun Title Insurance Agency in St. Petersburg, which she opened in 1996.

I had the pleasure of first meeting Nancy in Tallahassee at lobby days. She was on my team and we lobbied about half-a-dozen Florida legislators to extol the important points of the estoppel bill. Since then I have met with her several times in her office in St. Pete, at which time she took right to rolling her sleeves up and helping plan out the upcoming convention. I have no doubt she will be a great asset to our organization, and especially to all of us agents.

As we plan out the convention, we are hoping to drive home the important and quickly evolving threat of fraud that has found its way in our industry. In my opinion, fraud is the single biggest issue facing us. One incident can do irreparable financial damage. Unfortunately, it is the world we live in and we must be vigilant in guarding against it.



Some ways a fraudster may attack are obvious, like hacking into an email chain and attempting to redirect a wire. Some have attempted to sell abandoned or unoccupied homes with false identification. I have also heard of fraudsters going on *SunBiz* and altering the membership of a company, making it appear the fraudster has authority to sign.

Even more cavalier, it seems fraudsters may be entering offices under false pretenses, like pretending to be a state or federal inspector, or pretending to be your copy machine repair person. In both instances, they seemed to be looking to access files on the hard drive of a computer or the hard drive in the copy machine that stores scanned data.

Hearing of these latter instances spurred an inquiry with Ray Wenger, Bureau Chief, Florida Department of Financial Services (DFS), into what authority the State of Florida relies on to inspect a title agent office.

Mr. Wenger's response pointed to § 624.317, Fla. Stat., as granting authority to investigate agents, and pointed more specifically to §624.318 (2), Fla. Stat., which reads:

“Every person being examined or investigated, and its officers, attorneys, employees, agents, and representatives, shall make freely available to the department or office or its examiners or investigators the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination or investigation. An agent who provides other products or services or maintains customer information not related to insurance must maintain records relating to insurance products and transactions separately if necessary to give the department or office access to such records. If records relating to the insurance transactions are maintained by an agent on premises owned or operated by a third party, the agent and the third party must provide access to the records by the department or office.” (Emphasis added by Mr. Wenger).

Although Mr. Wenger cited to the above, he did not confirm that any of his inspectors were in fact entering title agent offices unannounced.

Therefore, although it seems DFS may have the authority, the question for any title agent is “Are these ‘inspectors’ who they claim to be?” “Are the copy machine repair people really from the copy machine company?” There is nothing preventing any of us from asking for identification, or better yet verifying with whatever company or agency they may be from before letting any inspection take place. Our own vigilance is, again, the best guard against this threat.

Finally, as we wind through the legislative session in Tallahassee, I want to note efforts of our FLTA lobbyist David Daniel, of Smith, Bryan and Myers. He, along with other lobbyists from our various underwriter members, has done a great job in keeping me informed of new bills appearing that may affect our industry.

Donations to the lobby fund are always needed. See below to donate today!

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. Please donate to support your industry by mailing a check to:

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Government Affairs Chair

Mickey Godat | Title Resources Guaranty Company



This quarter the members of FLTA have been very busy as the legislative season got rolling. We held a very successful Lobby Days in which teams of members met with dozens of legislators stumping for the FLTA's legislative initiatives. The Association has decided to sponsor three bills this year; renewal of the Data Call information privacy, the HOA/COA estoppel reform and reform of Owners and Encumbrance Reports/Plat Certification. Below is a synopsis of those bills and the latest action on them. Due to space limitations copies of bills have not been presented, however, if you'd like a copy please reach out to us and we'll be happy to provide them.

House Bill 7067/Senate Bill 7024: Data Call Information Privacy is the renewal of the law that exempts from public disclosure all of our private data we submit to the State due to the data call. The original law allowing the information to be exempt was set to expire this October. This is a non-controversial bill and is projected to pass without opposition.

House Bill 483/Senate Bill 398: HOA/COA estoppel reform, pretty much needs no introduction or explanation. Again this year we are encountering determined opposition from the HOA/COA lobby. However, a few weeks ago the FLTA and the

main force of the HOA/COA lobby worked out a compromise which should allow a bill to get through both houses of the legislature. The FLTA Board of Directors reviewed the compromise and agreed to it. Here is what the compromise entails:

- Fee caps of \$250.00 for a certificate, \$100 if there is a rush and \$150 if the owner is delinquent.
- Those fees will be adjusted every five years based on the Consumer Price Index at that time.
- The certificate will be delivered within 10 (three days if a rush) days or the fee is waived.
- The certificate will be valid for 30 days or the fee is waived.
- No 'pay at close' provision in the bill.
- If a deal cancels more robust refund provision, including the right to a refund cannot be waived or modified.
- Standard list of information to be included on in the certificate.

We are disappointed that the pay at close provision will not be in the bill. However, that was the single issue upon which the associations were completely opposed. We felt that the caps on fees, the robust refund rules and the other items gives the membership some measure of relief, gets a bill actually passed.

Owners and Encumbrance Report/Plat Certification Reform: this is a bill to reform the O&E report statute as well as the Plat Certification statutes to tighten up the language regarding the limitation of liability of the preparer as well as that the report is not an insurance product. Due to many factors, this initiative has had difficulty getting traction this year in the legislature. It isn't too late and we still hope to be able to attach the language as an amendment to another un-related insurance bill. The Association appreciates the efforts of the underwriter lobbyists in driving the initiative.

Stay tuned for our next Government Affairs Committee call for up to the minute news on these and other important issues affecting our members.



Searching for Title positions and professionals?

When it comes to making career connections in the title industry, the mass market approach of mega job boards may not be the best way to find the candidates you need. The FLTA Career Center was created to give Title employers and job seeking professionals a better way to find each other and make that perfect fit.

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The advertisement features the FLTA logo (Florida Land Title Association) and a photograph of a smiling woman in a business suit.



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Title Industry of Florida - PAC

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

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North American Title Ins. Co.
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Larry Deal

Silver Club (\$50)

1TRACT-Lee Swaffield
Barry Scholnik



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Test Your Title Expertise Answers

1. **False.** According to Sec. 689.02, F.S., “such parcel identification number is not a part of the legal description of the property otherwise set forth in the deed and may not be used as a substitute for the legal description of the property being conveyed.”
2. **False.** Section 709.2106(3), F.S., provides that a power of attorney executed in another state is valid in this state if, when the power of attorney was executed, the power of attorney and its execution complied with the law of the state of execution. However, under the definition contained in Sec. 709.2102, F.S., “Another state” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.” Foreign countries are not included.
3. **False.** According to Sec. 709.2109(2), F.S., an agent’s authority terminates when an action is filed for the dissolution or annulment of the agent’s marriage to the principal or for their legal separation, unless the power of attorney otherwise provides. This applies to powers of attorney to be used in Florida. See Sec. 709.2107, F.S.
4. **False.** Differently spelled names that sound the same are presumed to be the same, and the discrepancy in spelling may be disregarded under the rule of Idem Sonans. Uniform Title Standard 10.2.
5. **True.** Section 627.7845, F.S., provides that these items must be preserved and retained for at least 7 years.



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