

NALTEA

National Association of Land Title Examiners and Abstractors

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Mary Mitchel, President
Email: president@NALTEA.org

In mid-June, I was contacted by an attorney, Matthew D. Monson. He represents an abstractor in Louisiana who is being sued by a title insurance company. Mr. Monson thought that NALTEA would be interested in this case and subsequently might like to file an amicus brief to preserve our members' interests, as they relate to the title insurance companies. Once I read the e-mail, I forwarded it on to the rest of the board for their comments. Well, Mr. Monson was correct. The board of directors agreed that an amicus brief should be written by NALTEA pertaining to this case.

What makes this case so interesting is the fact that an abstractor provided a "title abstract" to a party who, based on that "abstract", sold the property to a second party. The property was in turn sold once again to a third party. Although we are still researching all of the specifics of this case, it appears that the information provided on the original "title abstract" was used as a basis for making a determination as to marketable title in two later transactions as well. The original "abstract" failed to show two out sales on the property.

Even on the simplest level, there are many questions that need to be raised, the least of which is what is meant by the term "title abstract"? That term can be defined very differently in various parts of the country. A traditional "abstract of title", a/k/a "title abstract", in some parts of the country, contains a complete history of a specific property and is updated with each additional transaction. With the diversity

of companies currently ordering search products, there are just as many definitions circulating throughout the industry, which can be the basis of great confusion and perhaps misuse. Many companies use the term "title abstract" when referring to a "current/present owner" type search. What type of search did this abstractor provide? Was it intended to be passed on to a second and third party? How are our searches being used and to what extent, and to whom are abstractors held accountable? Those are just a few questions that have been raised. Obviously, there is much more research that has to be completed before an amicus brief can be written, on behalf of NALTEA, and subsequently approved by the board. The board's intent is to write a brief that will address both types of "abstracts", as well as the three theories of liability adopted across the county: contract, negligence and negligent misrepresentation.

We will be continuing to monitor this case as it moves along and will certainly let you know what happens in the future. Once the brief is written, approved and filed, we will share it with you. It sure does make you want to ask a few additional questions of your clients, doesn't it? Primarily, what their intended use of your product is going to be. I would certainly like to hear what your thoughts may be on the matter, especially if you have had, or are familiar with, other cases whereby an abstractor was being sued by a third party. More specifically, following three separate transactions. As always, I look forward to hearing from you. I can be reached at: president@naltea.org or mmitchel@accusearchco.com

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Good Times and Bad, There's Always Work for the Abstractor

V. Lynn Hammett, Board Member
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Remember the Savings & Loan debacle during the 80's? It gave us the

Resolution Trust Corporation run by the US Government to dispose of real estate assets under distress throughout the country. Foreclosures were everywhere! At the time, I lived in Atlanta and every

(Good Times... continued from front cover)

community in that area had its share of failed subdivision projects. It was a disaster, and it took years to get all the properties out of inventory.

We're just at the beginning of another major real estate debacle. It's been predicted that more than 2 million homes will be foreclosed in the next two and a half years. If that's the case, this will exceed the mess we had in the 80's! This is not good for consumers, but as abstractors, we can take advantage of a large, steep decline in real estate sales by getting ourselves educated and prepared to take on the huge surge in foreclosure searches we'll be seeing.

States such as Michigan, Ohio, Minnesota, Nevada and Colorado are experiencing foreclosures at record levels. California, Alabama, Indiana and Mississippi have very high foreclosure rates as well. There are a couple of opportunities to consider. A large amount of foreclosures mean that searches must be done prior to public sale. Also consider that investors will be buying up foreclosed property, so a search is needed on that end, too.

What do you need to know to be comfortable abstracting foreclosure property? Searching foreclosures is not complicated, usually. Set-up your chain, recommended to 40 years if that is common for a full search. Check each owner in the chain carefully, and pay particular attention to your current owner. People in foreclosure very often have other credit and payment problems lurking about, so double check those liens and judgments. Verify that the taxes are paid; if someone is going into foreclosure, property taxes are not typically a priority.

If you're searching property after the foreclosure sale, perhaps for an investor, examine the foreclosure file. It's important to determine that all interested parties are notified and addressed during the foreclosure process.

While it's distressing to see the nation suffer under the current real estate conditions, not all news is bad. There are some areas in which housing is appreciating, and sales are steady: Wyoming, Oregon, New York, New Mexico, Texas, Alabama, Virginia, North and South Carolina, Pennsylvania, Utah, Louisiana, Arkansas, Washington, Georgia, Idaho, Mississippi, and Tennessee are experiencing appreciating or stabilized sales and/or appreciation. In these areas, work is steady and the clerk's offices are steady with incoming filings.

While foreclosures are up, investors are buying, which means title work is out there in good times or bad. It's up to you to go out and find it.

V. Lynn Hammett is President of Capitol Title & Research Services, Inc., which she operates with her daughter, Savannah Traynum. She's been active in the real estate industry for over 22 years as a paralegal, abstractor, appraiser, and consultant. Her expertise is in commercial and industrial properties, eminent domain acquisitions, property disputes and residential parcels. She is an active board member for NALTEA and the board liaison for the NALTEA Education Committee. She is currently pursuing her Bachelor's Degree in Real Estate Studies from Marylhurst University.

Other Ways to Avoid Delinquent Accounts

Dave Gaer, President, Wexford & James
www.wexfordjames.com

1. Don't grant credit; it's not always possible or practical, but some companies can be run without expanding credit. Require cash or certified checks/money orders. Ship C.O.D., especially new customers who don't have payment history with you.

2. Require deposits; both service and product businesses can ask for advance payments. Require a percentage payment up front and balance upon delivery, request a deposit based on standards for their industry or payments due when milestones are met.

3. Offer terms; terms outline how you expect to get paid and what interest or penalties you charge for late payment. State these clearly on your contracts and invoices because you cannot request that these terms be met if customers don't know about them in advance. A 1 1/2% /mo. charge for late payment indicates that you are serious about timely payment. You may also offer a discount for early payment. Applicable collection and legal fees can also be added if your written terms include this language.

4. Get a signed agreement; if there is a collection problem, having a signed agreement makes your case much stronger. Use a purchase order or contract that details how much is owed and when it is due. Review terms and deadlines with the client. Always record changes or compromises in writing. Memories become convenient, put it in writing, this becomes a permanent record.

5. Check credit; collect necessary information on a Credit Application. For businesses, ask for business name/DBA, federal tax ID number, names of owners/principals, address, phone number and SS number. (example included)

6. Personal Guarantee; should the business default, you have an individual(s) that now is personally responsible for paying what is owed. (example included)

7. Create a billing or overdue notification system; You cannot collect if you don't know how much is owed to you and when it is due. Make sure someone in your company is responsible for keeping this up to date.

Wexford & James is a professional collection agency specializing in commercial (business to business) collections throughout North America. W&J currently assists NALTEA members throughout the United States with their collection requirements. If you are interested in discussing how Wexford & James can assist your company please call me at 877.547.6848 x113.

Good Luck with Business!

Attention: The NALTEA Members' Only Section of the Web site is up! You can request a password directly from the Web site and access the members' only information that is currently available. We will update that section of the site as new information becomes available.

Event/Planning Committee Update

Joanie Ripley, Chairperson
Email: events@naltea.org

Our committee is moving along with plans for the 2008 NALTEA Conference being held in New Orleans.

The Conference will be held at the Chateau LeMoyné in the French Quarter. The address is 301 Rue Dauphine. The phone number is 504-581-1303. You may visit their website at: www.hi-chateau.com. We have secured a room rate of \$125.00 per night. When making your reservations, tell them you are with the NALTEA Conference.

The Chateau LeMoyné is only one block away from Bourbon Street. Many attractions are within walking distance such as Jackson Square, The River Walk, Harrah's Casino, Shopping, and fine restaurants. All rooms offer complimentary Internet access. This hotel is small, so NALTEA will take up a good portion of the hotel. They also have a private courtyard which is where we would have our Friday registration/social event.

Our committee is now working on getting speakers and sponsors.

We will keep you informed as to our progress. Have a great summer.

Board of Directors Update

Mary Mitchel, President
Email: president@naltea.org

It is my turn to report to you on what the Board of Directors has been working on this month, so here it goes:

Although our most recent meeting was held on June 19th, several issues were addressed both prior to and following our meeting. We try to accomplish as much as possible, via e-mail, during the month so that our board meetings are not as lengthy. I like to get through an entire agenda, rather than carry items over into the next month. It works very well for us.

A final draft was approved for general guidelines for those interested in holding a title camp. Not only does it explain what a title camp is, it contains some helpful recommendations for organizing one. From picking a date, to a suggested agenda structure, it has all of the information you need to get started. At the very least, it will help you determine if this is something that you might be interested in doing yourself. I believe this will be made available on our member resources pages on the NALTEA Website real soon, if it isn't there already.

The Treasurer's Report, for the month of May, was submitted and approved by the board. We received approval for our application to accept credit cards for membership dues and conference registrations on line. Modifications to the website are being made now. Believe me, it is a lot more complicated than I ever anticipated. We hope to have that up and running within the next couple of weeks.

The Ethics Committee had previously submitted a

Grievance Procedure, along with a Complainant Form, to the board for approval. It somehow got set aside and forgotten for a while. It was, however, redistributed. The board approved a revised complainant form, while a revised version of the grievance procedure is being reviewed right now. I expect that a procedure will be finalized within the next week or two. Once completed, these will be made available on the NALTEA Website as well.

We completed our discussion regarding the proposed "partnership" with the American Legal & Financial Network (AFN). I believe this was mentioned last month, as well. Although we all agreed that we certainly would like to have them take part in our conferences, etc., and vice versa, it was decided to decline any type of "partnership" with another association. We welcome any/all associations that share our vision, to exchange ideas, information, sponsorships, etc. We look forward to working with them in the future.

Membership numbers, at least for new members, were quiet last month. I believe we only had one or two new members join us during June. Welcome! Remember that we continually offer an incentive for you to refer new members. Check it out on the Website. For members, please continually check out the resources/benefits pages. We, with the help of the Benefits/Publications Committee, are always trying to add new items, which we feel would benefit you. A Merrill Lynch benefit was added this month, along with the information on "Principles of Abstracting, Searching and Land Records Management" (national edition), which is listed as approved reading.

Speaking of approved reading, the Education Committee is currently compiling all of the questions that we have onto a disk that will be forwarded on to the board for their review and subsequent approval. Once that is done, it is on to the testing site. They are making headway toward the Certification Test.

Lastly, the Planning and Events Committee would love to hear from you. As you know, our next conference will be held in January in New Orleans. They are currently speaking with potential vendors, speakers and sponsors. Sponsorship is one of the easiest ways for companies to get their name out there. It can be as simple as providing a door prize, or goodie bag. If you know anyone you feel would be interested in either speaking or providing some form of sponsorship, please get in touch with our planning and events committee.

The Latest Defalcation

Robert A. Franco, Source of Title
Email: rfranco@sourceoftitle.com

Guarantee Title Company in Nixa, Missouri was closed down recently when their bank froze their accounts for lack of sufficient funds. Commonwealth Land Title Insurance Company, Guaranty's underwriter, conducted an audit and discovered a shortfall in the company's accounts of approximately \$4.5 million.

One of the company's owners admitted in front of

witnesses to “a scheme of inappropriately commingling and transferring funds between and among different banks and multiple accounts to replenish shortages and to also mask shortages.” Commonwealth is suing Guaranty for breach of contract.

Title agency defalcations are never good news in the title industry. Missouri has been a particular hot bed of activity with the closures of Title Insurers Agency, Capital Title, Phoenix Title, and others. The Missouri Department of Insurance and the state’s legislature have been working overtime to address the epidemic.

Problems like this typically arise when the agent “borrows” money from the company’s escrow accounts to pay operating expenses, or diverts it to personal use. When business is booming, there is a large enough float in the escrow account that an agent can get away with it for a short period of time. However, when business slows down, there isn’t enough new funding coming in to cover the shortages.

While it is not known if any abstractors were owed money from Guaranty, defalcations can hit the abstractors particularly hard. The underwriters may be on the hook for any escrow funds, but they are not going to be liable to pay the company’s bills. It has been reported that Guaranty was the region’s third largest title agency in number of employees. They likely had the appearance of stability. This defalcation is further evidence that it is important for abstractors to be diligent in collections, even from large companies who you may think “are good for it.”

In fact, not paying their abstractors may be an early indicator that a company is in a financial crisis. By notifying a client’s underwriter of their delinquency you may be assisting the underwriter in heading off much worse problems. Perhaps such a notice should be considered as a part of any collections procedure. After normal procedures fail, such as sending past-due notices and follow-up phone calls, you should consider sending a polite letter to the client expressing your concern and letting them know your next step will be notifying their underwriter of the payment problems. And, of course, turning the account into collections or filing suit may also be appropriate at that time.

The same tactic may be utilized when an attorney becomes delinquent in paying his invoices. The bar associations frown on attorneys that cannot manage their finances. Perhaps a letter to the bar association, or even the threat of such a letter, would be enough to secure payment from a problem client.

However, this is almost certain to burn bridges. It is not something you would want to do if you are trying to salvage a working relationship with a client.

In reality, title agents and attorneys have much more to lose by not paying their abstractors. Collecting from them should be much easier than collecting from vendor managers. Some vendor management companies only serve as middlemen, passing your search along to their client. Those companies are truly the ones that can get away with not paying an abstractor and finding another source for their searches. Thus, if you are working with this type of client, it is important to know and trust them. Develop a good rapport with them and keep on top of your collections.

One thing to remember, not every late payment is an indication that there is a serious problem. Mistakes happen and we need to work with our clients to resolve them. Good communication skills are important. There could be a bookkeeping error, things do occasionally get lost in the mail, and sometimes there may be a good reason why a company is not paying for a search. The best solution is always to talk to the client and try to resolve the situation amicably. Only when all else fails should we be considering more drastic measures.

NALTEA Membership Update

Nikky Eisenhuth, Committee Chairperson
Email: membership@NALTEA.org

NALTEA welcomes the following new members:

Georgia Title Resources Corp. Tamara L. Henderson	Duluth, GA
Dynamix Plus, Inc. Lyn Fiandaca	Tujunga, CA
Blue Ridge Legal Resource Robert W. Battle	Franklin, NC
Infinisearch, Inc. Raymond Glowniak, Jr.	Folsom, CA
Fleming Smith, Inc. Katherine S. Fleming	Simpsonville, SC

This brings the total membership to 119 active members. If you know someone that may be interested in becoming a member, please e-mail membership@NALTEA.org and someone will contact them with a membership application.

Got an idea for the newsletter?
E-mail: publications@NALTEA.org
Feel free to submit an article for publication, or just an idea for us to explore for an upcoming edition.
We appreciate any contributions our members can make. We hope to hear from you soon.

Thank you,
The Benefits/Publications Committee