



NALTEA

The National Association of Land
Title Examiners and Abstractors

Message from the President

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It's hard to believe that April is here already. Where I am in the southeast, just when we think Spring is here, another cold snap comes along. Springtime signals activity in the real estate market, well, usually. I know that's not the case in some areas of the country. In our area though, we've actually seen a little bump in sales with first time homebuyers taking advantage of the \$8,000 stimulus program. Of course, foreclosures are still a good portion of our work these days. Unfortunately, the typical transaction and foreclosure searches aren't always enough to sustain a company.

The NALTEA board is always looking for ways to bring value to your membership. We've got an amazing board this year and so many new ideas are being discussed. Dave Pelligrinelli has been actively involved with environmental searches and he has agreed to develop a webinar to help our members understand this market niche. He will be putting this together in the coming weeks, so watch your inbox and plan to join us for what I hope is just the beginning of many webinars and white papers available to our members.

To get you prepared, I found a great resource that will introduce you to environmental site assessments. *Environmental Site Assessment Phase I: A Basic Guide* by Kathleen Hess provides an excellent overview of environmental

issues surrounding real property. Chapter 5 discusses the historical use of property and ways to discover what those uses once were through the title search process. You can preview the book with a Google book search. I hope you'll find it useful.

Through the years I've researched quite a few industrial properties. These are clearly subject to contamination just by the nature of their use. Sometimes I may be researching a parcel in a rural area and a deed in the chain of title will indicate that gas pumps were once on the property. We will report that information of course, but I've never followed up to see how it affected the transaction. I, for one, have never researched property for the sole purpose of determining any environmental issues. It never even occurred to me that environmental searches could be a niche market.

Today's focus on environmental issues is actually a great opportunity for you. Historical data in the public records is not always available online, and as Hess so aptly puts it, "it is possible for anyone to perform a title search, but the learning curve is steep." She wrote those words in 1998, but they still ring true today. Online records just give you the data; the job of connecting the pieces and recognizing what is missing is the expertise you have to offer.

Hopefully you'll find this niche market interesting and will perform your own due diligence to

understand issues related to this industry. As for the board, we'll keep looking for new knowledge and information that can help you expand your professional services.

Board of Directors

Ed Gunther

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The NALTEA Board of Directors held its regular monthly meeting on March 16, 2009. Lynn Hammett, President of the Board, called the meeting to order via the customary conference call. Board members Vikki Moffitt, Pat Scott, Ed Gunther and Dave Pelligrinelli along with Vice President, Debi Merrill and Secretary Jill Kissell were all present on the conference call.

The Ethics Committee reaffirmed that both parties were advised that the board unanimously voted to dismiss the recent complaint pursuant to the written agreement between both parties.

The Beta test of the NALTEA Certification Exam was discussed. Personal experiences and feedback were expressed. The opinion of the board is the hosting site is an excellent platform to present the test. With some minor tweaking, the long awaited NALTEA Certification Exam will be ready to roll out.

Pricing the exam and the supporting study book, authored by Jeanne Johnson, lead to a lengthy discussion. Pat Scott put forth a motion to price the text book and exam for a combined price of \$125.00; or the exam without the text book for \$85.00. This motion passed with there being two dissenting votes cast.

Pat Scott reported that we had gained five new members since our last meeting. Pat indicated that our email membership drive will be ready and the board was asked for comments regarding the email solicitation that is ready to go out. Our membership researcher is now providing 50 - 80 new contacts per week and we hope to see a steady increase in membership.

Dave Pelligrinelli has been making efforts to increase NALTEA visibility by getting some links up on various industry related websites. The goal is to have vendors/clients first question of an abstractor be: "Are you a member of NALTEA?"

Dave asked for feedback on the value of a NALTEA printed directory with editorial content and profiles on members. In addition, Dave was looking for feedback about adding more content to the NALTEA website that would encourage

visitors go to the site more frequently and spend more time there.

After discussing information gathered regarding E&O carriers, a motion was made to utilize TitlePac as NALTEA's preferred E&O carrier. The motion carried with four votes in favor and one abstaining.

Sites for our annual conference were discussed at length. The Board members will be gathering information on several host cities. Included on the list of cities under consideration are: Atlanta, Greenville, Nashville, Lexington, Charlotte and Louisville.

Suggestions for speakers for the conference were requested and Jeff Sherman from TAVMA was mentioned and Ed was going to follow up with him as to his availability.

Several other topics for future consideration were discussed. The next Board meeting will be April 20th at 6 pm edt.

Public Relations Committee Report

Dave Pelligrinelli

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Of the several plans for promoting NALTEA in 2009, the printed NALTEA member directory project is the first to be put forward. The committee has accumulated data for a mailing list of recipients who would be excellent prospective clients for NALTEA members, as well as influential companies and groups that can promote the value of our association. Depending upon the final number of copies to be printed and mailed, we will also add additional recipient contacts from the legal and municipal industries.

We are also proposing to include informational content within the printed directory to make the publication useful for recipients beyond just looking up member abstractors. The content will be articles with information that will interest and inform, as well as promote the value of abstractors who have demonstrated their professionalism and commitment to the title industry, by joining NALTEA.

Members are invited to contribute articles for the publication. Those which are published will feature the authors name and contact information, providing additional publicity for the abstractor. The 100 NALTEA members represent a collective knowledge base of valuable abstracting

experience. Published articles written by NALTEA abstractors will demonstrate that member abstractors are above average title professionals, and show potential clients that a professional abstractor is different from a "records fetcher", or online data.

Environmental Liens

Dave Pelligrinelli

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Abstractors are encouraged to look into the area of environmental liens searching for expanding their business. I have been working with a large environmental industry client, to set up an in-house vendor relations department for them to manage their searching of over 100,000 properties per year. This month, I will be introducing their research and dispatch team to the NALTEA community, so that NALTEA members will be the first abstractors used by the company to set up its searching system. I have promoted the fact that members are would be more experienced, and have a higher degree of professionalism than abstractors who have not joined a trade organization.

In 2005, the American Society of Testing and Materials introduced the new standard (ASTM Standard E-1527-05) for Phase 1 environmental site assessment reports, and environmental liens. Providers of Phase 1 ESA's often call upon traditional title abstractors to do environmental lien searching. The reports require making "All Appropriate Inquiries" (AAI) of several items, including a type of record called environmental liens.

With traditional real estate records searching, the word "lien" has a clearly understood definition. The definition of an environmental lien is more broad in scope than a typical "property lien". Real estate liens are clearly defined, and are located using traditional title searching methods, which have been used for decades. In addition, conventional real estate liens have a recording and indexing mechanism relatively uniform across various jurisdictions of municipalities, usually at each county. "Environmental Liens" are different in some ways. The types of records that can be classified as environmental liens come in a wide variety, and are recorded in dozens of dissimilar manners. Since the introduction of the new ASTM standard in 2005, and its requirement since 2006, many other types of remedial records have been issued as environmental liens. Some items that

would be classified as an environmental "lien" in the engineering industry, for purposes of fulfilling the AAI requirements, will NOT be found in regular land records.

In addition to environmental liens, the engineering company will also normally be looking for a report for items called AUL's and IC's. In the Environmental Risk industry, these stand for Activity and Use Limitations, and Institutional Controls. These are restrictions placed on the property concerning its use. AUL's normally come in the form of deed restrictions, or easements. IC's can come in the form of easements, or even regulatory statements filed outside the land records.

Under Section 312.25, "all appropriate inquiries must include a search for the existence of environmental cleanup liens against the subject property that are filed or recorded under federal, tribal, state, or local law."

The AAI rule also states that "liens may be included as part of the chain of title documents or may be recorded in some other manner or format by state or local government agencies."

A few examples of locations where environmental liens, AUL's, and IC's can be found are:

- Zoning records
- Licensing boards
- Environmental agencies
- Property records
- Department of revenue

The statutory language which describes the searching required for environmental liens states that the following must be performed:

Searches for recorded environmental cleanup liens against the facility that are filed under federal, state or local law.

Reviews of federal, state and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal and spill records concerning contamination at or near the facility.

Some of this searching may already be done by your client. However, it is important for the abstractor to know that records that are classified as environmental liens, AUL's, or IC's can be in more locations than just the county records room.

All members should have received an email regarding Environmental Data Resources, Inc., but if you missed it you can read it at http://www.naltea.org/pdf/environmental_data_resources.pdf

History and Background of U.S. Titles

During the first century of our nation's history, Americans became all too familiar with land title troubles. In early real estate transactions, the name of the game was caveat emptor – “let the buyer beware.” The ultimate responsibility for verifying the validity of a land title was a burden left to the buyer. There were land laws in place, thanks to our founding fathers, but few attorneys available, and so it was commonplace for persons to use specialists, called *conveyancers*, to assist with the purchase of land. Conveyancers were professionals, similar to today's abstractors and title examiners, who were learned in real estate law.

Watson vs. Muirhead In 1868 that the problem with conveyancers drew public attention in the landmark Pennsylvania Supreme Court Case of *Watson v. Muirhead*. A lay conveyancer, Muirhead, searched title to a parcel of land. When a question came up about a judgment against the owner, the conveyancer contacted an eminent Philadelphia attorney as to its validity. The attorney informed Muirhead that he believed it did not constitute a lien. Relying on that, Muirhead proceeded to assist the sale to Watson. However, after completion of the sale, the judgment creditor sued, and the court ruled in favor of the judgment creditor, leaving Watson with no title and loss of his money.

As a result, Watson then sued Muirhead for negligence. The court's ruling was that searchers (conveyancers) and attorneys could not be held liable for erroneous opinions based on varying professional standards of evaluation. After all, the court ruled, it was a question of judgment, not negligence. But Watson had lost his investment. And so it became clear that something was needed to protect innocent investors from similar hazards and to encourage land development and American growth.

The First Title Insurance Company Several years later, in 1876, one hundred years after the founding of our nation, a group of conveyancers met in a small office opposite Philadelphia's Independence Hall to incorporate the world's first title insurance company, The Real Estate Title Insurance Company of Philadelphia.

Homestead Act of 1862 The Homestead Act of 1862 was signed into law by President Abraham Lincoln on May 20, 1862. It required three steps: file an application, improve the land, and obtain a Patent (a deed of title from the U.S. Government.) Any head of family or person 21 years of age, including freed slaves and women, who had never taken up arms against the government, could file an application. Eventually 1.6 million homesteads were granted and 270 million acres were privatized - a total of 10% of all lands in the United States. With increased landownership under the Homestead Act, came the need for title insurance, so that owners could assure ownership borrow money for improvements.



The 1880's Saw Increased Title Problems As the country grew, land title issues became a problem. The **California Gold Rush** in the 1850's had brought hundreds of thousands West to look for gold. Confusion over Mexican Land Grants, squatters, and documents recorded in the land records was a disaster. Accordingly, title insurance companies were formed to take on the challenge, as gold mining petered out in the 1880's and people settled into their daily lives building homes on their land. Title Insurance was perceived as a way to avoid court costs and unpredictable ownership outcomes.

The Roaring 20's brought Laws to Securitize Loans By the 1920's, commercial lenders started to look for security for their loans. Laws were passed and mortgages created a vehicle for securing the debt. With the risk of loss, due to a bad title, Lenders saw Title Insurance as the answer, and were a driving force behind the growth of the industry.

Government Programs of the 30's The Depression brought the New Deal. High unemployment and bank failures of the depression had thrown the country into hysteria. Homebuilding, essential to the economy, was down and foreclosures were rampant. In 1934, FDR signed the **National Housing Act** to provide a mechanism for citizens to obtain fi-

nancing for homes and to again begin the acquisition of wealth and the U.S. government entered the mortgage field with the **Federal Housing Authority (FHA)**, the predecessor to **Housing and Urban Development or HUD**. The FHA's charge was to stabilize the real estate segment of the economy with mortgage money so that home purchases and the many related jobs were increased. The FHA was not a lender, but similar to title insurance, it provided lenders with a sort of insurance policy, that should a borrower default the government would step in. By collecting a small premium from borrowers and placing it into a fund, the FHA could cover costs related to foreclosure and reselling of the properties. Title Insurance was required in conjunction with FHA loans. As a result, Title Insurers grew as the demand grew, and hundreds of title insurers were formed across the U.S.

Along came World War II, and in its aftermath, an enormous demand for housing, and Title Insurance became the dominant form of title assurance. The **Veteran's Administration** was a major force in helping returning veterans to obtain homes using title insurance.

The 50's and Beyond By the 1950's Johnstone (*Title Insurance, 66 Yale, L.J. 492-493 1966*) estimated that approximately 150 title insurance companies existed across the U.S. By the 1970's he states that the number had dwindled to fewer than 100 by merger and acquisition. As of 2008, government records show that only five primary title insurance underwriters hold in excess of 90% of all title insurance written in the U.S. The insurance is written directly by the insurers (under various trade names) and by hundreds of independent title insurance agents, through title agency contracts. Conveyancers, in the modern sense, continue to be an important factor in searching titles, lending and securing the American economy.

Author: Jeanne Johnson has worked in the abstracting and title industries for over twenty-five years. She has actively managed and trained hundreds of personnel in both public and private sectors - from those who maintain title records, search, examine and underwrite; to those who close both residential and commercial transactions and issue title policies. She is now a professional author, consultant, trainer and speaker about real estate issues and she currently chairs the NALTEA education committee.

Membership Committee Report

Pat Scott

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NALTEA proudly welcomes our newest member, **Linda Dees Price**. We now have 84 active members.

Phase two of our membership drive is now in progress. We have gathered contact information for hundreds of potential new members and we have begun the direct marketing campaign. We hope to see a significant increase in membership numbers over the next few months.

Publication / Benefits Committee Update

Doug Gallant

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The board is working on updates for the NALTEA website. Members are encouraged to contact Doug Gallant with suggestions for improvements to the site.

While the board is basically happy with the appearance of the website, no real updates have

been made since it was originally established. I know we have a number of clever members who will have good ideas.

I look forward to hearing from the membership at large with ideas and concepts to enhance the site.

The Publications Committee is always looking for your ideas, comments or submissions for the newsletter. Please address to benefits@naltea.org.

The organization welcomes input from the membership. You can contact the board members or the various committee chairpersons at the e-mail addresses found on the NALTEA website at www.naltea.org.