

# NALTEA

National Association of Land Title Examiners and Abstractors

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Mary Mitchel, President  
Email: [president@naltea.org](mailto:president@naltea.org)

Recently, NALTEA was approached by a senior analyst at the US Government Accountability Office (GAO) in Washington, DC. GAO is an agency of the US Congress, which was conducting a study, at the request of Senator Charles Schumer (NY). This study was being done with two objectives in mind. The first being to examine what actions, if any, federal agencies have taken to protect Social Security numbers that appear in records provided to state and local public record keepers. The second being to examine to what extent vulnerabilities remain to protecting Social Security numbers within these records.

First of all, a 'thank you' goes out to David Bloys, of Davick Services, for suggesting NALTEA as a great contact to the GAO. They had contacted him for his input as well. To say the very least, I was thrilled that the GAO was interested in speaking with us and equally thrilled that they were already aware of our association. The senior analyst had visited our Website on previous occasions. Lynn Hammett, another NALTEA Board Member, and I took part in a conference call with them at which time we discussed our experiences and opinions regarding the topics presented. We also had an opportunity to discuss public records, bulk sale of the same, as well as other issues affecting us

today, from NALTEA's perspective.

Any time we are presented with an opportunity to share our concerns, especially with a federal organization, is a big benefit to NALTEA. Exposure, exposure, and more exposure. It is one of the many ways to bring attention to our association and, perhaps, entice people to join.

Both the Public Relations Committee and Membership Committee are working diligently to create opportunities for further exposure. One of the quickest ways to do that, in the immediate future, is by attending as many of the larger, national conferences as possible. There are several held each year, one of which is next month. Pat Scott, Board Member and Liaison to the Public Relations Committee, is working with the board right now to arrange for NALTEA presence at the TAVMA conference in March. We hope to attend many more.

Our new Board of Directors had its first meeting on the 20<sup>th</sup> of February, with a multitude of items on our agenda. There will be much more to report in next month's newsletter. In the interim, as is always the case, please do not hesitate to contact me with any suggestions, article topics and/or opinions you may have to share. Your board is very appreciative of your input and support. I can be reached at [president@naltea.org](mailto:president@naltea.org) or [mmitchel@accusearchco.com](mailto:mmitchel@accusearchco.com).

## Board Member's Perspective

LaWanda McMillian, Board Member  
Email: [lawanda@sltitle.com](mailto:lawanda@sltitle.com)

On February 20, 2007 the NALTEA board had its February meeting. There were plenty of issues up for debate this month. The biggest being benefits for the NALTEA Members. The board felt that one of the most useful benefits would be a collection agency. We also discussed possibly changing the NALTEA Website to contain a "members only" section. This

would give the NALTEA members user-access information to access parts of NALTEA that would not be available to all public users. Content seems to be a big issue with this. If anyone has any suggestions on what content needs to be member only information, then please contact Robert Franco.

The board also discussed the issue of when and where to have the next NALTEA conference. This debate is between the weekend of Columbus Day and

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(Perspective... continued from front cover)

the weekend of Martin Luther King, Jr. Day. There were several cities mentioned. There are several issues and questions that need to be answered before we can make a decision, but we will address these issues at the March Board Meeting.

Some other topics were Title Camps and the test. It looks like the test is almost ready to go, however, the Education Committee is still looking for a testing center to give the test.

Most everyone was in agreement that some general guidelines should be made for holding Title Camps. We also discussed NALTEA supplying pens, pads, etc. This too, will be discussed further at the next board meeting.

Although there are many decisions left to be made, the board voted to let Jay Duncan chair the Ethics Committee.

## Ethics Committee Update

Jay Duncan, Chairperson  
Email: ethics@naltea.org

A quick update on what the Ethics committee is up to. We are currently developing a grievance form and procedure in the unlikely event that anyone should believe that a Naltea member is not living up to the Code of Ethics. In the form we will be asking what article of the Naltea Code of Ethics that the filer believes the member is violating. Just saying someone is unethical does not make it so. We all have our personal beliefs on what is ethical and what is not, but it is the Code of Ethics that will be used for the Naltea standard.

Should anyone have any ideas or suggestions or would like to help out please e-mail me at ethics@naltea.org.

We are also looking for stories of searchers going above and beyond the call of duty in completing their searches. You can forward those stories as well to ethics@naltea.org.

## Personal Information Responsibility

Jay Duncan, Chairperson  
Email: ethics@naltea.org

With all the criminal and unethical behavior running rampant through the Title Industry it should be time that we look at our own business ethics and our ability to protect our clients and the borrowers that we conduct searches for.

The sixth article of the Naltea Code of Ethics reads:

*"Members shall maintain the up most exercise of discretion when researching property and protection our client's privacy. This includes the protection and destruction of personal information after the abstract is completed."*

What does this mean? It should be construed that

what ever information we find out about the property and the persons we search, even though it is public information, be reported only to our client and not spread through out the courthouse. Our fiduciary responsibility is to our client and the borrowers.

To that end what do we do with the search when we have sent it off to our client and have been paid for the search? Do we put it in the trash with the coffee grounds and banana peels? As we all have run into, most county records sometimes contain personal information that should not be there in the first place. We should protect that personal information from those who would do harm to our clients and borrowers. The documents should be properly destroyed to insure none of the personal information can be used. Many of us scan our searches into our computer systems to have easy access and eliminate the need for storing the hard copy of the search. You should also insure proper firewalls to again protect that information. The hard copy should then be shredded or destroyed in such a fashion that the personal information can never be retrieved.

There are many shredding services out there as well as shredders that can be purchased to facilitate the destruction of your documents. We shred the entire search as so we don't waste time re-examining each document for personal information. The resulting shredded paper can then be recycled or donated to a local animal shelter.

Protect your clients, borrowers and yourself.

## Does an Abstractor's Liability Depend on Privity of Contract?

Robert A. Franco, Vice President  
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Consider this situation: "A" is contracted by "B" to conduct a title search. "B" provides it to "C;" and later "C" discovers a defect. Can "A" be held liable to "C" for any errors or omissions? In this example, "A" is in privity of contract with "B", not "C."

Not surprisingly, there are different opinions on this issue in the courts. The general rule seems to be that an abstractor can only be held liable for negligent preparation of an abstract only to a party, such as the purchaser of the abstract, in privity with the abstractor. This general rule is still followed in Ohio, for instance.

In Ohio, two fairly recent cases have held that privity is a requirement for an abstractor to be held liable for a negligently prepared search. In the first case, an attorney in the course of representing his client purchased a title search from an abstractor who missed oil, gas and mineral reservations. The client made payments totaling \$50,000 to clear the title and filed suit against the abstractor. The trial court dismissed the action due to a lack of privity between the client and the abstractor. The client appealed and the court of appeals affirmed citing an Ohio Supreme Court Case from 1910: "An action against an abstractor to recover damages for negligence in making or certifying an abstract must be founded on contract; and

the general rule is that an abstractor can be held liable for such negligence only to the person who employed him.” Try as they might, the client in this case could not convince the court to abandon the requirement of privity as other states have already done.

In reading this case, I wondered what would have happened if the client had tried to sue their attorney, who would have been in privity with the abstractor. Would the client have been able to prove the attorney was negligent in hiring the abstractor? Presumably, it is not negligent to contract out services such as searching titles; it is a very common practice. If there was no reason for the attorney to expect that the abstractor was not competent to provide the search, he was probably not negligent. Thus, the only course for the client may have been to attempt to sue the abstractor as the negligent party.

In another Ohio case, an abstractor showed a defect on the title that delayed a closing. It was not until the buyer and seller went to another title company that it was discovered that the title was marketable and they were able to close. In a suit against the abstractor for fees caused by the delay, the court again relied on the same 1910 Ohio Supreme Court case. The court of appeals said that “until such time that the Ohio Supreme Court overrules *Thomas* (the 1910 case), we are bound by the rule of law set therein.”

However, other states have relied on a third-party beneficiary theory to find an abstractor liable in the absence of privity. In Florida, an abstractor prepared a title search for a seller. A title company relied on the abstractor’s search to issue title insurance and later was forced to pay approximately \$75,000 to release a missed judgment lien.

In this case, there was privity between the abstractor and the seller, but not the title company. However, the Supreme Court of Florida held that “when an abstract is prepared in the knowledge or under conditions in which an abstractor should reasonably expect that the employer is to provide it to third persons for purposes of inducing those persons to rely on the abstract as evidence of title, the abstractor’s [sic] contractual duty to perform the service skillfully and diligently runs to the benefit of such known third parties.” The court went on to say “the effect of our

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holding in this case will be to change the law of abstractor’s [sic] liability... Moreover, others involved in the transaction through their relationship to the purchaser — such as lender-mortgagees, tenants and title insurers — will also be protected where the purchaser’s reliance was known or should have been known to the abstractor [sic]. But a party into whose hands the abstract falls in connection with a subsequent transaction is not among those to whom the abstractor [sic] owes a duty of care.”

The states that have adopted a line of cases that do not require privity cause quite a problem for an abstractor. It would seem a reasonable conclusion that every search an abstractor provides to a client is going to be relied on by third-parties. It is probably a rare occurrence that a client orders a search solely for their own benefit. When you search a title, do you not anticipate that it will be used for a real estate transaction and that a prospective purchaser, or lender will rely on the information?

This issue really underscores the importance of E&O insurance, and, of course, conducting every search to the best of your abilities, as thoroughly as possible. The inevitable conclusion is that the liability of the abstractor is being expanded and the fees abstractors charge should be increased accordingly. It is important to keep in mind that while some clients maintain that you don’t need E&O insurance to work for them, it may not be your client who exercises their right to sue you for a negligent title search.



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\*\* A special thank you to Doug Gallant for spotting this cartoon and tracking down the appropriate person for their permission to re-print it in our NALTEA newsletter.

**Attention:** The NALTEA Web site will soon have a new "Members-Only" section that will contain information on member benefits and other information intended only for our members.

When it is ready, you will be given a password to log-in. We are excited about this new addition and it should be ready in the next few weeks.

## 8 Ways to Slash Your Taxes

Jay Duncan, Chairperson  
Email: [ethics@naltea.org](mailto:ethics@naltea.org)

Are you ready for tax time?

First of all, let me be very upfront, I am **not** a tax guru or a CPA so check with them before committing these ideas to your tax return, but I will give you some quick tips to lower your tax liability.

**Your Car.** The number one most important asset for an independent abstractor's business, their car. You can deduct the costs of operating and maintaining your car, including gas, oil and repairs. But if you have a problem keeping all those receipts, use the standard mileage allowance by keeping a thorough record of the miles you drive to and from the courthouse. Usually, you would be able to deduct your mileage starting from your office (or home-office) to each courthouse, from one courthouse to another, but not the mileage from the last courthouse to your home, unless your home is your principal place of business. This can add up very quickly. My first year I was able to write off over 44,000 miles. I believe the current deduction is 44 1/2 cents a mile and if you drove 44,000 miles times that, you would end up with a \$19,580 deduction. How is that for a reduction in taxes? Again check with your tax advisor on this deduction for any new changes in the IRS code.

**Travel and Entertainment.** This can include traveling to visit a client or attend a conference, airfare, hotel or rental car maybe deductible. Entertainment and meals with a client may also be deductible, but there are some limitations.

**Your Home.** To qualify, for a home-office deduction, it must be used for business on an "exclusive" and "regular" basis. You must not have any other primary workspace. You may be able to deduct part of your house payment, electric and gas bill. You will need to figure out the percentage of your home space that is dedicated to your business. Even if you don't qualify for the home-office deductions, you will be able to deduct the cost of separate phone and fax lines.

**Your Family.** As a small business owner, you may hire your spouse, children and even your parents as a way of lowering your tax burden. By shifting business income to another family member, you can move dollars from higher tax rates to lower rates, creating real tax savings for you and your business.

**Schedule C.** You can claim business related deductions on Schedule C rather than on Schedule A as miscellaneous deductions. Business deductions claimed on Schedule C are less likely to be reduced by income limitations and thus reduce your self-employment taxes, which run as high as 15.3 percent.

**Incorporate.** This is an option to be investigated together with your tax advisor and make your decision based on their advice. Incorporation has a tax reducing advantage in the areas of both federal, state, and social security withholdings. It is generally a lower tax rate than being self-employed.

**IRA.** Even if you put away as little as \$25 a pay period, depending on how it is set up, your take home pay actually will go up about \$1 a pay period. And if your employer (you) matches that amount, it is actually like getting \$50 free for your retirement. If you haven't started an IRA, it should not be too late as long as you get the money in there prior to filing your return and prior to April 15<sup>th</sup>, you can then count it on 2006's return.

**Plan Ahead.** If you find yourself owing Uncle Sam this year, then lower the number of allowances on your pay check and have more taxes taken out. Especially if you know you will not have that big equipment purchase that you had this past year.

Again with any these suggestions run it by your tax advisor first before committing it to your return. We as abstractors want the work to run through us because we are the professionals. The same should be said when filing our company tax returns, let the professionals work with you to find the best deductions and returns for your business.

## NALTEA Membership Update

Nikky Eisenhuth, Committee Chairperson  
Email: [membership@naltea.org](mailto:membership@naltea.org)

NALTEA welcomes the following new members:

Hughes Legal Support  
Stephanie Mallinson  
Cranston, RI

McKeever Abstract  
Brenda I. Blask-Lewis  
Herkimer, NY

This brings the total membership to 96 active members. If you know someone that maybe interested in becoming a member please e-mail [membership@naltea.org](mailto:membership@naltea.org) and someone will contact them with a membership application.

**NALTEA Members can use their membership number as a coupon code for 50% off of Subscriptions to Source of Title, and 10% off of enhanced listings.**