

NALTEA

National Association of Land Title Examiners and Abstractors

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Message from the President

Wanda Steudel, NALTEA President
Email: president@NALTEA.org

Again, I have to commend the membership. I have received several e-mails & phone calls this month, regarding my message last month and NALTEA in general. I found it very interesting and encouraging that all the responses I received seemed to be in agreement with one another. All agreed that a current owner is from the time the person comes into title forward. I was most encouraged to discover that all those that responded, would ere on the side of caution and search back if it were family owned. Also, all agreed that a search for leases is an additional request and would be priced accordingly. If the search was going to be more then the initial agreed upon fee, all stated they would call the client prior to completing the search. I did not get one response that stated, "We give them the last deed of record and that is all we do."

I think that it is important for all of us to develop relationships with our clients. We all know that, sometimes the person we are speaking to on the phone may not have as much land title experience. In my opinion we have a responsibility to assist them when something out of the ordinary comes up. I am certainly not advocating that we start giving legal opinions. But a phone call with a "heads up" followed by a note on the report, has always been my policy.

Most of you that responded thought it would be a good idea to try to put together a glossary of search terms. Having something that is acceptable nationwide would be quite an undertaking, but, I am sure it would be helpful. Our national clients send out their orders with the same request for every state. Why can't abstractors do the same?

On another note, I recently was asked to serve on a panel at the Ohio Land Title Association's annual convention. Our topic was "Search Standards & Resulting Liability Issues." I was asked to represent the abstractor's view. I felt that the

discussion with my panel members (both attorneys) went well. We actually agreed on most issues. I hope that I was able to convey our concerns appropriately.

Most of the attendees were representing various title companies through out Ohio. Several people made a point to speak to me during the rest of the convention. Some just wanted to thank me and tell me that they agreed with what I said. Others wanted to discuss a few points further. There were several that were interested in hearing about NALTEA. I handed out quite a few NALTEA cards. Everyone was interested in the certification or licensing of abstractors.

I have stated from the beginning that education and certification are what I think is the most important idea that we should accomplish. We have an education committee that meets via conference call every other week working on this goal. They are making progress; however, they are a small group and could really use some more hands. Please consider helping in this area. I hear more and more people in our industry discussing this topic. If NALTEA could be ahead of the curve on this, I believe that it will benefit our membership tremendously.

Board of Directors Update

Lynn Hammett, Board Member
Email: vlhammett@yahoo.com

Membership continues to be a strong focus for the NALTEA board of directors. We are continuing to look for ways to expand our membership with a focus on benefits of membership. We've discussed sponsor benefits such as company discounts for supplies and services. In response to a suggestion from a NALTEA member, we are also in the process of developing a statement of commitment so we can show prospective clients that membership in NALTEA means something. The board agrees that

Contact:

NALTEA
10024 Office Center Avenue
Suite 100
St. Louis, MO 63128

E-mail: info@NALTEA.org

membership in NALTEA shows a commitment to a higher standard, a willingness to expand our knowledge, and a respect for our profession that deserves special recognition.

We will continue to spread the word about NALTEA by contacting abstractors and title examiners nationwide through any available medium. Our goal is to provide information to recorders' offices nationwide, and we need your help. Please email Patrick Scott, Board Advisor to the public relations committee at publicrelations@naltea.org with e-mail or addresses for the recorders' offices in your area.

Another areas of focus for the board is certification of our members. We have asked the education committee to revamp the previous testing and certification requirements. It is important that the testing offered by NALTEA be original and comprehensive to reflect the professionalism of our members. The committee is working to provide access to the certification test at various testing centers nationwide rather than online through the NALTEA Web site. The board is anxiously awaiting further development and has asked that the education committee continue to focus on the certification test while realizing that aspects of certification levels will continue over time.

The events committee is busy preparing for our annual conference. We'll be seeing you all on the West Coast in January 2007 as we meet in beautiful San Diego. Plans are still being made for speakers, updates, and activities. Please feel free to offer suggestions, and we are especially interested in what you want as far as speakers and activities. These are just some of the ideas presented so far: Back to the Basics (Finding New Business in Tough Times), Staying Motivated, Legislative Updates. Please contact Joanie Ripley, the chairperson at events@naltea.org for your ideas and comments.

We want to remind our members of the categories of membership available. **Corporate/Independent** membership is available to those companies that derive more than 70 percent of their gross income from the business of researching, abstracting, examining, reporting or retrieving land records or to individuals who engage primarily in the profession of researching, abstracting, examining, reporting or retrieving land records. **Individual** membership is available to employees who are active in the profession of researching, abstracting, examining, reporting or retrieving land records. Finally, **Associate** membership is open to business entities or persons not otherwise eligible for Corporate or Individual membership. The board would like to clarify that the Associate member category would apply to those organizations and individuals that use the services of abstractors and examiners or offer services to the abstractors and examiners. This distinction will become more important in the weeks to come as NALTEA develops new marketing tools for its membership.

The board of directors wants to thank all of you for your support and input. We welcome all comments and ideas and look forward to receiving feedback from our members.

Planning/Events Committee Update

Joanie Ripley, Chairperson
Email: events@NALTEA.org

Our committee is in the process of selecting a hotel/resort for the NALTEA 2007 Winter Conference to be held in San Diego, California on January 12-14th. There is also a San Diego Harbor Dinner Cruise on Saturday, January 13, 2006 that we are inquiring about for our group. Finalized information on the hotel and cruise will be detailed in our next newsletter.

We are now accepting Sponsorships toward any event, such as the Friday night Hospitality function, breakfast, lunch, etc. If you would like to sponsor an event or part of one, NALTEA will display your company's name at the event. We will also have door prizes this year and will be happy to accept donations. Or, if anyone would like to donate promotional items for goody bags, such as pens, cups, sticky notes, or other items, it would be appreciated. Please call me, Joanie Ripley, at 216-771-7667 or send an e-mail to jripley@accusearchco.com. and let me know what interests you.

Our committee is looking for vendors for the conference. If you, or someone you know, would like to reserve a table at our conference, please call Kristi Eth-Duncan at 314-842-8329 x 226 or e-mail kristi@bistate.info.

Ethics Committee Update

Robert Breakell, Chairperson
Email: ethics@NALTEA.org

There has been much talk lately as to ethics in the title industry. I have had the opportunity to hear many concerns, which address many areas of ethical and unethical practices. Your input is very important to the Ethics Committee; please let us know what's on your mind. E-mail us at ethics@NALTEA.org. If you haven't had the chance, take a look at the article written by Jarrod Clabaugh at sourceoftitle.com. The article is entitled "Ethics: The Difference Between Behaving As We Should and As We Do," and can be found in the January archives.

Over the course of the next several months, we will be taking a look at the Code of Ethics and going into some more detail on each Article.

First

Governed by the laws, customs and usages of the respective communities they serve, and with the realization that ready transferability results from accuracy and perfection of titles, members shall issue abstracts of title or policies of title insurance only after a complete and thorough investigation, founded on adequate records and learned examination thereof and shall otherwise so conduct their business that the needs of their customers shall be of paramount importance.

So, what does it mean? Basically, you, as a NALTEA member, agree to follow the laws and customs within the jurisdiction where you perform work. You further agree to be diligent, accurate and thorough when performing such examination of land records. The member also agrees to conduct business with the best interest of the customer in mind.

There are many situations where this article may apply. Land records and their indices are far from perfect; however, we as abstractors should know when something 'just doesn't seem right.' This is exactly why we are hired to examine land records. Here is one example: a mortgage has been released on the subject property. We don't find any open mortgages thereafter; however, the borrower has only held title to the property for several years, and the consideration was \$300,000. What does this say to us as abstractors? "Something just doesn't seem right!" There probably is another mortgage. We can't find it, but the ethical thing to do would be to report our suspicions to our client. Another example: You run a current owner search with a 20-year judgment search. You report your findings and judgments are clear. Two weeks later, the client asked you to do a bring-down. While doing the bring-down, you discover a tax lien that you missed during your original search. What do you do? The ethical thing to do would be to report it to your client. Yes, you probably will be paying off the lien if the mortgage has closed, but you will have your client's best interests in mind and, surely, it will come back to haunt you if you don't report it.

Just today, a client asked me to do a "limited search" on their borrower, who claims to hold title on the subject property. Now, I have a big problem with doing "limited searches." If I had reported what the client had asked for, I assume they would have written the loan. It turns out the borrower was foreclosed on several years ago. We ended up running a 10-year chain of title to prove to our client that the borrower did not hold title. The subject property has actually been conveyed several times since. Moral of the story: we could have reported what the client had asked us to report; however, the information would not be accurate. We did the ethical thing and spent a little more time uncovering the actual situation.

These are just a few examples of why this First Article is so important. Please let us know if you may have any questions.

Membership Committee Update

Nikky Eisenhuth, Chairperson
Email: membership@NALTEA.org

NALTEA membership is at a total of 114 active members. Our goal is to double last year's membership of 106; you can help us meet that goal by helping with the membership drive or passing the word about NALTEA on to your colleagues. For more information on what you can do to help the membership drive please e-mail pr@NALTEA.org or membership@NALTEA.org.

Insuring The "Gap"

Reprinted with permission from First American's *Claims Chronicles*, by Bert Rush.

Longmont, CO--When Gary left his employment at the Rocky Flats plutonium plant he received severance pay of \$270,000.

Some of the money was used to buy this home for Gary and his new wife, Diane. The rest may have been used to pay debts from Gary's former marriage. None of it, however, went to the IRS.

Months later, Gary and Diane applied to refinance their home. The new loan amount would be \$98,000. After paying off the existing loan and costs of refinancing, Gary and Diane would receive about \$30,000.

The loan documents were signed on Monday, November 8. The three-day rescission period, provided by federal law, would have expired at midnight on Thursday, November 11. But November 11 was Veterans Day, a holiday, so the rescission period expired at midnight on Friday, November 12.

The lender would have funded the loan the next business day, on Monday, November 15, but they had a problem with a local mortgage broker so the loan funded on Tuesday, November 16. The lender's deed of trust recorded November 18.

Meanwhile, on Monday, November 15, the IRS filed a tax lien against Gary and Diane in the amount of \$139,007. This represented the taxable portion of Gary's severance pay, plus penalties and interest.

The First American agent who had handled the closing became aware of the tax lien even before the lender's title policy was issued. Since the tax lien had priority over our to-be insured lender, the Company immediately contacted the IRS to ask for a release.

Because Gary and Diane received only about \$30,000 from the refinancing, the IRS accepted \$30,717 from First American to release its lien.

MORAL: Here's the deal: In any transaction there's the risk of a last minute recording that even the most careful search can't detect.

Title people call this the "gap" problem. In fact, there are two gap periods to worry about: the period just before closing, and the period after closing but before your documents get recorded. An adverse interest coming of record during either period may assert priority over your transaction.

Title insurance provides coverage against adverse matters recorded in the first (pre-closing) gap period, but not necessarily the second (post-closing).

Fortunately, the possibility of non-coverage for the post-closing period exists only in the rare situation where a standard coverage title policy is issued with a policy date as of the closing (or settlement) date. In such a case, an adverse matter recorded in the post-closing gap may be excluded as a post-policy event.

If, on the other hand, standard coverage is issued with a policy date as of the date of recording of the

insured interest, then the closing date is immaterial and both gap periods are covered.

This issue did not present itself in the Colorado case, described above, because insurance regulations there require full gap coverage for all title policies issued. This is not the case everywhere. Clients wishing to know more about this aspect of their coverage should inquire of their local First American representative or issuing agent.

Will Recent Government Inquiries Reshape the Title Industry?

Jarrod Clabaugh, *Source of Title*
Email: jarrod@sourceoftitle.com

State attorneys' general and government officials' recent concerns over title insurance practices have been at the center of numerous settlements and inquiries on both the state and federal levels. As title insurance executives and other industry leaders speak before subcommittees and special commissions, most deny any wrongdoing and claim that title insurance remains a competitive industry that forces them to offer certain benefits to their members and other professionals within the field.

Yet, it appears that title insurers aren't settling for merely stating their opinions before legislators. LandAmerica allegedly made threats against Erin Toll, the deputy commissioner of the Colorado Division of Insurance. Toll recently testified before the Subcommittee on Housing and Community Opportunity on behalf of state regulators' investigations of the title insurance industry. Toll testified that title insurance's uniqueness provides fertile ground for questionable activities, including affiliated business arrangements that create an environment rampant for kickbacks. Although kickbacks are clearly prohibited by the provisions of RESPA, Toll argued that they are still implemented by title insurers and very little is done to hamper their use.

However, Toll admitted that she and other state regulators are refusing to let title insurers get away with offering kickbacks to other members of the industry for who steer business in their direction. She noted that she and others like her in the National Association of Insurance Commissioners have aggressively pursued and impose penalties, ordered restitution and revoked or suspended the licenses of unscrupulous title entities.

When asked about what needed to be done to reel in the actions taken by title insurers, Toll defiantly said that "there need to be more penalties and restitution available if we're ever going to stop this practice." She also indicated that she had been told by a fellow state regulator that threats had been made indirectly against her by title insurers, warning her to back off her investigations into the industry.

Toll said that due to the actions she has taken thus far, title insurers have paid restitution of more than \$25 million to Colorado consumers alone. In other states, such as California, insurers have paid even more to consumers after claims were brought by government officials that they had acted in the interests of their own financial gain instead of the best interests of the consumers.

Following Toll's appearance before the subcommittee and her comments about feeling as though she, and others in her position, have been threatened by members of the title insurance industry, Representative Michael Oxley, the chairman of the Committee on Financial Services, and Representative Barney Frank, the ranking member of the committee, sent a letter to LandAmerica's executive vice president and general counsel, Michelle Gluck, asking that her company submit all documents or records created in the last 12 months in the possession of LandAmerica or its affiliated entities or representatives that relate to Toll. The documents and information the company has been asked to submit should include any letters, memorandums, electronic communications or details of conversations that have been had concerning the deputy insurance commissioner.

The letter also requested that LandAmerica submit a summary of any conversations made within the last year by any employee or affiliated entity or representative of LandAmerica with any staff of any state insurance department that referenced Toll. Oxley and Franks noted in the letter that additional evidence that had been brought to their attention since Toll's appearance before the subcommittee only further strengthened their belief that impropriety was at play.

Lloyd Osgood, a spokeswoman for LandAmerica, told a reporter with *The Rocky Mountain News* that Toll is on a personal vendetta against the industry and she must be removed from the state's investigation of the company. "We believe that we have legitimate concerns about what we think are impediments to our ability to reach a settlement with state of Colorado," Osgood remarked.

In response to Osgood's claims, David Rivera, the commissioner of Colorado's Division of Insurance, said the attack was a smokescreen and that the company appeared to be attempting to focus its energies on discrediting Toll instead of resolving its business practices. He added that he considered LandAmerica's claims against Toll and dismissed them as he found them to be groundless.

Additional actions are being taken by members of the National Association of Insurance Commissioners, including the proposal of new industry standards for title insurance products.

The NAIC recently announced that, in collaboration with state legislators, it is proposing new standards for the Market Regulation Handbook. The proposed changes include the analysis of marketing and sales practices by identifying affiliated business arrangements and reviewing the disbursement of transactional funds.

"The Market Regulation Handbook Working Group is committed to addressing the current issues in the marketplace and to ensuring that the needs of consumers are being addressed in a timely manner," said Susan Voss, the chair of the Market Regulation and Consumer Affairs Committee.

The proposed changes to the handbook, are available until July 21, 2006 at the NAIC's Web site (www.naic.org/committees_d_market_handbook.htm).