

# THE TITLE EXAMINER

A QUARTERLY PUBLICATION OF THE MICHIGAN LAND TITLE ASSOCIATION



## IN THIS ISSUE:

- ❖ Capitol Day
- ❖ Summer Convention Details
- ❖ Transfer Tax and New Construction
- ❖ ALTA Revised CPL



The Michigan Land Title Association is a professional association dedicated to creating an environment which enables its members to provide the public with the highest quality land title evidencing, title assurance and settlement services.

[www.MiLTA.org](http://www.MiLTA.org)



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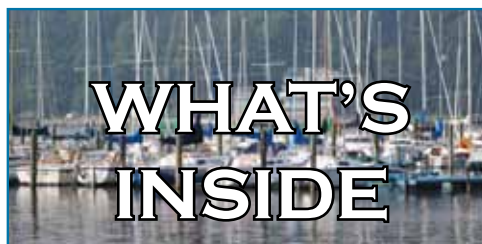
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Board of Directors.....	2	County Spotlight.....	15
Board Biz .....	2	Legal Update.....	17
Member Spotlights.....	3	Closing Protection Letter .....	18
New Members.....	3	tRU Tips.....	19
Abstractions .....	4	Upcoming Events.....	20
Views from the Shore.....	5		
Habitat for Humanity .....	6		
Legislative Update.....	8		
Spring Seminars .....	9		
Summer Convention Preview.....	10-11		
ALTA Federal Conference.....	12		
Michigan Realtor Statistics .....	13		
Dar's Dabbles.....	13		
ALTA Business Strategies Conference.....	14		

## Advertisers:

A.S.K .....	4
eRecording Partners.....	5
SoftPro .....	7
NATIC.....	8
Old Republic.....	11
Datatrace.....	16
Ramquest.....	19
Kasparnet .....	20

# BOARD BIZ

by Bob Wuerfel, Secretary/Treasurer MLTA

Dear MLTA Membership:

On May 14th, 2012, the Michigan Land Title Association Audit Committee conducted a review of the association's balance sheet related statements of revenue and expense for the 2011-2012 fiscal year. The committee was comprised of the association's Treasurer, Bob Wuerfel, its President Elect, Allan Dick and President, Cathy LaMont. The committee was also aided by its Executive Director, Marcy Lay. The review included examining the assn checkbook, Certificate of Deposit, monthly statements, deposits, withdrawals and running YTD balance statement and disclosures on the financial statements. We further examined the method by which entries were categorized to assure that the financial statements were free of material misstatement. Based upon this review, it is the opinion of the Audit Committee that the Statement of Assets, Liabilities and Fund Balances accurately reflects the financial position of the association as of May 11, 2012.

Very Truly Yours,  
Michigan Land Title Assn Audit Committee  
**Bob, Allan and Cathy**

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with any questions, comments, or if you would like to contribute.



## Amber J. VerBurg

*Vice President  
Safe Title, Inc.  
Holland, Ottawa County, MI*



**MLTA Involvement:** I serve on the MLTA Education Committee and participate in the Agent and Abstractor Committee. I enjoy attending as many of the MLTA events as possible, and recently attended the Fall and Spring Educational Seminars and Legislation Day.

**Personal Interests:** I enjoy furthering education to other industry professionals. I'm a Lakeshore Advisory Board Member for the Fair Housing Center of West Michigan and on their Educational Committee. I enjoy arts and crafts, gardening, cooking and spending time with my two wonderful children and my husband. I really enjoy the forum that the MLTA provides for title insurance professionals and other industry colleagues to share information with one another. We're able to concentrate on the issues that we all encounter within the dynamics of the real estate market.

## Gail Roethlisberger

*Lead Examiner  
Best Homes Title Agency, LLC  
Saginaw/Northern Operations*



**MLTA Involvement:** I have attended some MLTA educational seminars.

**Personal Interests:** I enjoy competition archery, entering cooking competitions, and spending time at our cabin in Gladwin. I've won numerous archery and cooking competitions. I actually love the work that I do, and have been enjoying it for 33 years. Our company is growing quickly, but we aren't out growing our friendly atmosphere. I enjoy sharing the knowledge I have gained over the years, and have taught classes to county employees, and at our local college. This is a fascinating business.

# Welcome

## New Members

Angi Notary Signing Services & Title Services  
*Lake Orion, Oakland County, Michigan*

American Title Company of Lenawee  
*Adrian, Michigan*

## James Casson

*Vice President Midwest Regional Director of  
Agency  
First American Title  
Grand Rapids, MI*



**MLTA Involvement:** I have been a member and supporter of the MLTA for many years, first through my employment with an agent member and now through an underwriter's prospective. During this time members of my staff along with myself have attended many of the seminars that the MLTA has offered and always find them beneficial. I also try to attend all of the Summer Conventions and am proud to allow First American Title Insurance Company to help sponsor these events.

**Personal Interests:** I enjoy traveling in our motor home with my wife Lesley, son Spencer and our various dogs. Our trips sometimes include our two grown daughters, Kylie and Lindsey along with our granddaughter Allie and grandson Carson. I hold a Bachelors Degree in Political Science and an MBA from Loyola University in Chicago. My wife and I have a passion for rescuing small dogs and recently drove to Iowa to rescue a newborn Shih tzu named Winnie with a physical disability.

## Happy Trails Marion!

There are precious few of us title folk working on our fifth decade in the title business, fewer still who began their title career right out of high school (unless maybe your folks owned a title agency). But, that is exactly what Marion Kaleel (now Gilhool) did in 1965, just days shy of her 19th birthday. Marion began a 46+ years title career with Lawyers Title in Downtown Detroit in the "legal department" with the attorneys who examined title. Beginning as a searcher who would prepare the basics on an "exam sheet" for the attorney-examiner to add the more complex requirements, Marion was, in her own words, a "sponge", when those attorneys shared their knowledge and information. Over time, those mentors included Nick Volino, Doug McDougal, Jim Kalejian, Bob Oliver, Jim Egan, Benita Teschendorf and Ralph Jossman.

In 1976, Marion took brief sabbatical from the title business to work for a shopping mall developer, but found her way back into title less than a year later, joining the staff of Detroit Title Insurance Agency. She began as a title examiner and right hand to then president, Jim Egan, and would go on to become executive vice president with multiple office, personnel and title responsibilities. Detroit Title changed hands and eventually became Capital Title Insurance Agency, from which she has just announced her retirement. The company held a retirement celebration in her honor May 29th in Berkley, MI.

Her recollections spanning these 35 years with Detroit Title/Capital Title include researching and selecting the company's first word processing system (she used to type legal descriptions on a "standard" typewriter), working additionally as an independent contractor to help Lawyers Title with the examination of over 600 parcels for the Pole Town plant in Detroit/Hamtramck, and working with Ralph Jossman on the Michigan Land Title Standards. Marion became involved with the MLTA in 1986, attending the semi-annual seminars and conventions, often as a photographer - member of the Title Wave. She later served on the MLTA Board of Directors. In recent years, Marion married Lee Gilhool, and is savoring her adventure into retirement. But, she leaves behind many fond memories and friendships, and an admirable legacy as a title professional. Happy trails, Marion.





# ABSTRACTIONS

by Allan Dick, Best Homes Title Agency, LLC

Gosh, it's May already, and the first summer holiday weekend is just ahead (behind by the time you get this). Interesting Education Seminars this past April and May with outside speakers, Rich Harlow (PA 116s) from the Michigan Dept. of Agriculture, Adam Gwaltney (E&O) from Ritman & Assoc. and Phil Neuman (CPLs) from Nadis and Neuman. Speaking of May, you know how ships in distress call "may day" for help? Ever wonder why? Apparently it's not really mayday at all, but rather "m'aidez" – French for "help me". (No French jokes.)



This from our roving reporter and past MLTA President, Doug McDougal. Doug and his wife Marie are snow birds splitting time between Florida and Mt. Clemens. Doug received an email from an associate that he felt compelled to share. It seems that this associate, a retired title person, was now the corresponding secretary for her Homeowners Association, and a local title company was seeking a status letter regarding the annual dues, anticipating a closing. This was the second such call she had fielded for this type of request.

When she asked the requesting party how she had gotten her name and number, that party said, "you are on the list of officers given to me (from the front page of their spring newsletter, which lists the officers names and phone numbers) – president, vice president, treasurer, secretary and corresponding secretary." But, she was flummoxed by the fact that the title person calling would choose the corresponding secretary over the other officers, like the president or treasurer. I guess the custodian's name and phone number had not been included. Nothing like starting from the bottom of the list. Who would you have contacted?

When is a bottom not a bottom? For a couple years now, I have been reciting articles from presumably knowledgeable sources pointing to the bottom of the housing decline just ahead. Wonder when that will be reality, as the target seems to be constantly shifting. Even now, there are articles suggesting that this is a great buying opportunity (prices off 34% nationally from their 2006 peak and extraordinarily low mortgage rates), while others anticipate a further decline in prices due to an almost four year shadow inventory of foreclosed (or to be foreclosed) homes, according to DS News.

Fitch Ratings predicts 2013 to be the latest market "bottom", but noted that Michigan is already stabilizing. Moody's analytics believes the worst may be over. And, Fannie Mae reports that the housing market is on track for recovery – whatever that means. Is an increase in foreclosures on the way? Realty Trac reported that the foreclosure notices filed in April nationwide were the lowest in five years. And, according to the National Association of Realtors, first quarter sales were the highest in five years. So, what's your guess?

On a clearer and cheerier note, the MLTA Summer Convention is just ahead (July 15-17) at Grand Traverse Resort. With excellent speakers and activities planned, the updated Grand Traverse facility, and an encore performance of the band, Unreal Property, a good time is sure to be had by all. Hope to see you there!

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# VIEWS FROM THE SHORE

By Sam Hill

Nice to have some occasional summery weather – without the bugs (but they're coming). Sure have been a lot of boaters getting an early start. I've been thinking a lot about signs lately. You know, that comedian Bill Engvall and his "here's your sign" routine. Well there are plenty of those situations all around us. But, I'm talking about billboard signs – like this one: "Affordable Bankruptcy" (really cracks me up). And I got to reminiscing a bit. Remember when we didn't have that many freeways criss-crossing the state, so much of the driving was done on two lane highways? (We still have them out here, by the way.) Do you remember the old Burma Shave signs? (Maybe you're too young.) As a kid heading "up north", they were fun to watch for.

I tried to recall some of those Burma Shave messages. But, it's been too long. Some of them were clever ads, while others were safe driving reminders. Isn't the internet grand? They were easy to find. Here are a couple of them. "She put a bullet – through his hat – but he's had closer – shaves than that – with Burma Shave". Or, "If daisies are your – favorite flower – keep pushing up those – miles-per-hour – Burma Shave". Hey speaking of reminiscing, this news story caught my eye: "House at Pooh Corner Goes Up For Sale".

Sure enough, there actually was (is) a house at Pooh Corner, the estate owned by Winnie the Pooh author A.A. Milne, whose son really was Christopher Robin. Cotchford Farm in Sussex, England, is where Milne lived and wrote until 1959. In a strange irony, Brian Jones, one of the founding members of the Rolling Stones, purchased the home in the 1960's. And, a month after being kicked off the band in 1969, he was found dead floating in his pool at Cotchford Farm. Glad I didn't know about all that, as I read about Pooh to my kids and we watched the Disney animations. The house is currently listed for \$3.2 million (in case you were wondering).



Not much else to share for now. Hope the warm weather brings more real estate activity. Still hard to say. But, at least the conditions are favorable for fishing. And by the time you read this, Memorial Day will be in the rear view

mirror. My, how time does fly. Well, that's the way I see it, and this is the view from the shore, so you can see what it looks like from here to there from time to time. Have a great summer.

Regards,

*Samantha Hill*

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# MLTA 2012 Capitol Day

## A Resounding Success!

by Cami Pendell, Michigan  
Legislative Consultants



The 2012 MLTA Capitol Day was held on March 28, 2012, and nearly 25 members participated to ensure it was a resounding success. They did a fantastic job meeting with state representatives, senators and staff to educate them on the issues that matter most to our association.

The day began with the MLTA's Executive Board meeting with Representatives Barnett, Stanley and Senator Young to discuss the importance of the land title industry. Discussion also included the topic of HBs 5257, which is sponsored by Rep. Barnett, and HB 5258 and why these bills are a priority for the association.

Following this meeting, the full Capitol Day's activities were kicked off with a pre-briefing for MLTA members that volunteered their valuable time to meet with legislators and their staffs. During this portion of the event, members were updated on current MLTA issues for their legislative meetings, provided with materials to share with legislators and given a schedule of their visits.

This year's priority issues that we shared with legislators included:

1. Educating them on the title insurance business;
2. Promoting HBs 5257-58 which will allow a copy of an original instrument that is verified by an affidavit and recorded to be deemed as complying with all recording requirements in this state;
3. Thanking them for passing HBs 4227-28 (now Public Acts 34 and 35 of 2011) which prohibit private transfer fees; and,
4. Sharing what challenges the industry faces at the local government level.

After a full morning of legislative meetings, MLTA members headed to the Capitol to help host a Legislative Luncheon for all state legislators. Our luncheon was extremely well attended and provided an opportunity for MLTA members to mingle with Senate and House leadership, as well as talk with committee chairpersons that have control over the legislation that we are working on. We kept our MLTA members going because after our luncheon they moved on to their afternoon round of legislative meetings.

Capitol Day concluded by MLTA members turning in their legislative meeting feedback forms. This information helps us to determine if there is any follow-up work that needs to be done on our priority issues.

It is important to note that MLTA's Capitol Day is not only significant to the association, but it is also meaningful to your state representatives and senators. This is a wonderful opportunity for them to get to meet you - their constituents! They want to hear what issues you care about and how they can better serve you. They also want to know how to make the state more business friendly to the land title industry.

Thank you to all of the members that participated in MLTA's Capitol Day. Year after year, you help to advance and promote our association and industry to members of the State Legislature. Your involvement helps to make the difference!



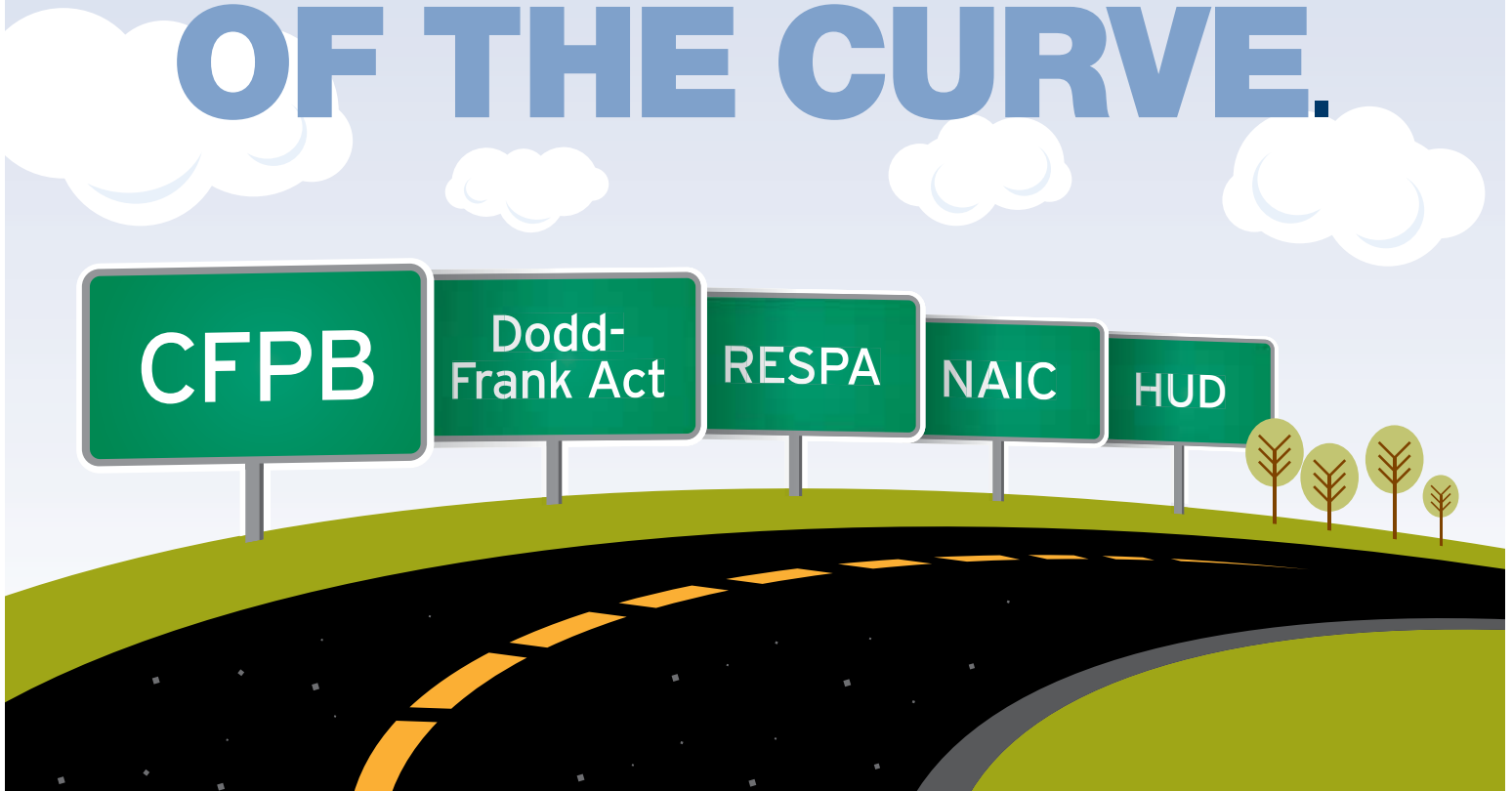
## Habitat for Humanity of Michigan Scores!

MLTA members helped raise over \$500.00 for Habitat for Humanity, by purchasing raffle tickets to win four tickets to the Detroit Tiger vs. Minnesota Twins game, on July 4, 2012. Of course, this includes a post game fireworks show! The winning ticket was drawn, during the MLTA Spring Education Seminar, in Livonia. Congratulations to Tim McDonnell!

Thank you MLTA members and Fidelity National Title Group (donated the tickets)!



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# Legislative Update

by Cami Pendell,  
Michigan Legislative  
Consultants

## WORK CONTINUES ON HOUSE BILLS 5257-5258

MLTA continues to work to advance House Bills 5257 and 5258 which would allow for a copy of an original instrument that is verified by an affidavit and recorded to be deemed as complying with all recording requirements in the state. Initially, it was our goal to ask for a committee hearing by the end of April. However, stakeholders came to us with some concerns and we decided to continue to work with them because that is in the best interests of all parties. This additional work at the front end of our legislative initiative should also help the committee process to go more smoothly once it begins.

Currently, we are developing and finalizing substitutes for our bills. Once that is complete, we will share our new language with interested parties and advance to the committee process from that point.

But, this behind the scenes work isn't slowing down our overall efforts to educate the Legislature on the importance of these bills. HBs 5257-58 were a primary focus of MLTA's Capitol Day efforts. These bills are currently in the House Local, Intergovernmental and Regional Affairs Committee so MLTA members made sure to reach out to those committee members in addition to their own representatives and senators. Our Capitol Day is a proven and effective tool in educating a large number of legislators and staff at one time on the issues that matter most to MLTA.

## MLTA IS WORKING HARD TO PROTECT ITS MEMBERS

Recently, House Bill 4860 (Stamas (R) – Midland) was taken up in the House Tax Policy Committee. As introduced, the bill would set the penalty for failing to notify the local assessor of a transfer of ownership of property at 1% of the sales price per day, beginning after 45 days had elapsed, up to a maximum of 25% of the sales price. The current penalty is \$5 per day, up to a maximum of \$200. While this is a very important issue for Rep. Stamas, he was willing to work with MLTA, along with the Michigan Chamber of Commerce and the Michigan Realtors Association, after we shared with him the impact this legislation would have on the title and real estate industry.

By working closely with Rep. Stamas, we

reached an agreement that changed the legislation in the following manner:

- Residential property is excluded from this increased penalty, it would apply to commercial and industrial property;
- There would be a tiered penalty applicable to those types of properties:
  1. For sales price that are \$100M or less, the penalty would be \$20 per day up to \$1,000.
  2. For over sales prices over \$100M, the penalty would be a \$20,000 fine after 45 days elapsed.
- It has to be willful neglect in failing to notify the assessing office;
- If it is willful neglect, then the assessing office has to send a written notice of the penalty;
- Additionally, language was added that filing the transfer of property affidavit does not mean that it is the final determination of the classification of the property being either real or personal property.

This bill, with the above changes, was reported out of the House Tax Policy Committee on May 9, 2012. Currently, it is on the House Floor waiting for a full House vote.

## LEGISLATIVE CALENDAR UPDATE

It is anticipated that the House and Senate will begin their summer recess in mid-June. This is earlier than in past years; however, the Legislature has been working hard to complete the state's budgets by the end of May. The framework is in place for the fiscal year 2012-2013 budget, and it will be finalized following the May Revenue Estimating Conference. It is expected that the Revenue Estimating Conference will show a slight increase of funds than what was initially forecasted back in January, but the Administration and Legislature is making it known that they do not intend to spend any surplus. They would rather save it and put it towards the next budget cycle.

## MEMBER SPOTLIGHT

Traditionally, most of the legislation that MLTA has worked on in the past went to the Local Government Committees in the

House and Senate. However, that has not been the case this legislative cycle. In prior editions of the Title Examiner, the member spotlight has been on a variety of committee chairpersons. This quarter's spotlight is on Representative Jud Gilbert (R- Algonac), who is the Chair of the House Tax Policy Committee. This is the committee that took up and reported out House Bill 4860 with MLTA's amendments.



Representative Gilbert is a lifelong resident of Algonac. He attended Algonac High School, St. Clair Community College, Wayne State Mortuary School and became a licensed funeral director in 1974.

Jud is a member of the Algonac Rotary Club. He has volunteered for numerous service organizations, including the Optimist Club and Youth for Christ, and has been a lunch buddy at a local elementary school. Representative Gilbert has served on many local government boards, including the E911 Citizen's Advisory Committee, vice-chair of the Clay Township Planning Commission, the Downriver Recreation Committee, Clay Township Downtown Development Authority and the Clay Township Economic Development Commission.

Gilbert is also a former state Representative and Senator. He served his first two terms as a representative from 1999-2002. He then served two terms as state Senator from 2003-2010. He is now in his last House term due to term limits.

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# Education Committee

by Crystal Bowyer  
Lighthouse Title Group



## SPLIT CLOSINGS AT THE SPRING SEMINAR

The annual Spring Education Seminars took place on Wednesday, April 11, 2012 in Mt. Pleasant with a turnout of 62 members; while the Livonia session, held on Wednesday, May 2nd had 52 in attendance. The two spring seminars saw a total of 114 attend and participate!

Amber VerBurg of Safe Title gave an insightful program on the Follies of Record, a Document Review. She talked about the common errors found on discharges and subordination agreements, which is a helpful reminder to look at those to make sure they make sense. Even with the MERS mess hopefully behind us, Amber reminded us to still be diligent in looking at Sheriff's deeds. And of course, don't forget about looking for deed reservations and life estates, they stick those in some strange places at times.

Richard Harlow from the Michigan Department of Agriculture and Rural Development came to talk with us about the Preservation of Michigan's Farmland. Did you know that there are 10 million acres of agricultural land in the state and 3.2 million of those acres have a PA116. Richard not only talked about the benefits the landowner gets (tax incentives), but also talked about how to enroll property into the program and the difficulties of getting out of it. And when the PA116 expires, don't just say OK and not worry about showing it on your commitment/policy, the landowner has to payback the tax credits they received over the last 7 years, which could result in a lien. And the Treasury

Department does not respond to the request for a calculation on the amount owed until late summer the year after the agreement expires. If you ever have any questions on these, Richard encourages you to contact his office.

Adam Gwaltney from Ritman & Associates ended the morning session by talking about Errors & Omissions Policies. Rates are on the increase and claims are generating non-renewals nationwide. When it is getting close to time for your renewal, make sure you are connecting with your agent to ensure there is not a gap in your coverage. Be leery of "new" programs and risk retention groups. Make sure you read your policy and all endorsements and ensure that there is a retro coverage date. Ensure your professional services are accurate on your policy, and watch out for policy exclusions like for attorney, CPA or real estate agents. Adam also talked about the importance of notifying not only your agent, but the carrier as well when a claim arises. Immediate reporting is critical.

After a great lunch, Phillip Neuman, Esquire of Nadis Neuman spoke with us about Closing Protection Letters. Why do lenders want a Closing Protection Letter? Keep in mind that agents are acting as agents of the insurer only when they are issuing policies and commitments. There is no agency relationship when the agent conducts a closing. Without a CPL, lenders have no recourse against the underwriter for fraud on the part of the closing agent. Phillip talked about the differences between the 1987 and 2011 Closing Protection letters. These changes have been made due to, of course, those pesky claims and lawsuits.

Doug Smith, Esquire from Stewart Title hosted a Split Closing Panel which

included, John Bommarito, Esquire from Attorneys Title, Karl Golicz from Capital Title and James Dondero, Esquire from First American Title. The group talked about commonly asked



questions when it comes to short sales and at times had varying opinions on the matters. It boils down to making sure you know who is doing which side of the transaction and having a checklist for who is doing what.

DC Comic Meets the MLTA – Thank you to Sarah Maddox Sutton, aka Sue Parr/XYZ Title, aka Super Split Closing Girl; Lori Nehring, aka Catrina/ABC Title, aka Cat Woman; Ann Wegener, aka Mrs. B (The Boss at ABC Title); and Cy Tope, aka Mike Moneybags/Mortgage-R-Us. All were directed by Allan Dick in a hilarious skit about Split Closings. After the panel discussion of the afternoon, this really lightened everyone's mood and offered a great comic relief to a sometimes frustrating situation. It reminded us that keeping the lines of communication open and doing what is best for our customer always wins in the end. And, you never know when you may see Super Split Closing Girl again, she really is SueParr!

# We Encourage You to Join Us at the Grand Traverse Resort July 15-17, 2012 for the Michigan Land Title Association...



## The MLTA is Proud to Present Several Respected Speakers



### Christopher Abbinante

*ALTA President  
Fidelity National Title Group, Inc.*

Former president of Eastern Operations for Fidelity National Title Group, Inc.

has been involved in the title industry for more than 35 years. During that time, Abbinante has worked with direct operation or agents across the United States, Canada and the Caribbean. He started in the industry in 1975, working for a law firm in Chicago that also had a small title agency. In 1976, Abbinante joined Chicago Title and served in many different capacities including: Chicago Metro marketing and sales manager, manager of Cook County operations, senior vice president and general counsel for Chicago Title's central division and eastern division manager.



### Tim Cusack

Tim Cusack has entertained thousands over 25 years of speaking, training and entertaining, working with some of the largest companies in the United States. From the

classroom to the boardroom, Tim presents his audiences with unique experiences and original perspectives, connecting with audiences one individual at a time. He has the rare ability to relate to large groups of people on a personal level. Tim enhances organizational culture through humor, stories and insights. He delivers meaningful and dynamic programs that inspire people to appreciate life, work and relationships. His performances fuse thought provoking, meaningful stories with candid audience connections - and guaranteed laughs throughout.



### Tim Skubick

A Michigan Land Title Association favorite - Tim Skubick is anchor and producer of the weekly public television series "Off the Record." This

TV show is seen on Michigan public television stations and has an audience of 100,000 viewers each week. Tim has anchored "Off the Record" since 1972 and is the longest serving member of the state capitol press corps. He also anchors the statewide investigative documentary series "Michigan at Risk," as well as State of the State addresses and other Michigan election and political specials produced by WKAR-TV in East Lansing.

## 2012 MLTA-PAC SILENT AUCTION AT THE SUMMER CONVENTION



The MLTA-PAC will be holding a silent auction at the Summer Convention at Grand Traverse Resort. We are currently in need of items for the auction. In the past, popular items have been gift baskets, sporting event tickets, small personal electronics, spa certificates and other types of gift certificates. If you have an item that you would like to donate for the auction, please contact Tim McDonnell at [timcdonnell@oldrepublictitle.com](mailto:timcdonnell@oldrepublictitle.com) and give him a description of the item and an approximate retail value of the item. You can bring the item with you to the convention this summer. If you have an item and will not be attending, please let Tim know and arrangements will be made to pick up the item.

For those MLTA members who are interested in bidding on items who will be unable to attend the Summer Convention, there will be an email and online option to bid on the items. Details for email and online bidding are being developed and will be released soon. THANK YOU for supporting the MLTA-PAC!

If you have any questions or would like to assist with the auction, please contact Tim McDonnell at [timcdonnell@oldrepublictitle.com](mailto:timcdonnell@oldrepublictitle.com).



## CONVENTION ACTIVITIES:



### A-Ga-Ming Golf Resort

Join your fellow MLTA golfers as we golf the beautiful A-Ga-Ming Golf Resort. Shotgun start at 1:30, but come early and practice that shot, enjoy a cold beverage and lunch before we start. A-Ga-Ming is located on beautiful Torch Lake approximately 20 minutes from the resort. Golfers are responsible for their own transportation. \$45.00 per golfer.



### Nauti-Cat Cruise

The MLTA cruise will take 2 hours. The Cat cruises in West Grand Traverse Bay. Depending on the wind speed, the Nauti-Cat is capable of traveling 14 knots. With 2 Heads (restrooms) aboard you can enjoy the full cash bar without being caught short. MLTA registrants will enjoy a luncheon during the cruise. Transportation to and front the event will be handled by the resort. If you want to feel like a part of the crew, raising the sails,

jibing, tacking, and driving, we will put you to work! While on the Nauti-Cat, you will see Traverse City from the best view, the water. Bring your camera, these photos will be unforgettable! \$40 per person (Includes transportation, lunch and 2 hour cruise).



### Grand Spa

Whether you desire a few soothing hours or an all-embracing spa vacation, our spa setting stimulates renewal of the body, mind and spirit. The 7,000 square foot Michigan spa occupies two floors and comprises a full range of amenities, including 23 treatment rooms, a salon and boutique. Once entering Spa Grand Traverse, guests have access to a sauna, mineral pools and 100,000 square-foot health club. Check in an hour or two early and join a Zumba

or gentle yoga class. Swim a few laps in our mineral pools and then rest in the dry sauna to loosen muscles. Unwind in the Spa lounge and relaxation room with a favorite book and cup of tea.

Sign up at [www.MiLTA.org](http://www.MiLTA.org)

## Thank you to our current 2012 MLTA Convention Sponsors

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# Why ALTA? Just a Glimpse

by Allan Dick, Best Homes Title Agency, LLC

As MLTA President-Elect, one of my assignments was to attend the recent Federal Conference, presented by the American Land Title Association in Washington, D.C., along with MLTA Legislative Steering Committee Chairman, Phil Savich, May 5 – 9, 2012. Of course, the nation's capitol is a fascinating place, and we only wished we had more time to sight-see during our four day stay. But, we had a pretty rigorous schedule (along with trying to keep abreast of our back home responsibilities, remotely). There was much to be done.

Open to any ALTA member, this conference provided an opportunity to learn more about, and thus focus on, pressing regulatory priorities – much like the annual MLTA Legislative Day, on an even grander scale. The key priorities included the Consumer Financial Protection Bureau's (CFPB) efforts to develop a new combined mortgage disclosure form, required by RESPA and TILA; anticipation of the much publicized GSE (Fannie and Freddie) reform; and extension of the National Flood Insurance Program. After two full days of indoctrination, listening to various guest speakers, and organizing our approach for Lobby Day, Phil and I set out to the visit offices of eight U.S. Congressmen from Michigan (appointments having

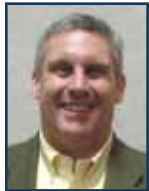
been made by the ALTA staff). And, much like our own Lansing Legislative Day, it wasn't at all intimidating and actually rather enjoyable (if not a bit tiring).



ALTA's Scott Blessing, U.S. Congressman Hansen  
Clarke, MLTA's Phil Savich and Allan Dick.

While Lobby Day was the focus of the conference's activity, there were numerous opportunities for networking and gaining greater insight into the activities and services provided by and through the ALTA. For example, you may recall current MLTA President Cathy LaMont mentioning at the recent Education Seminars how the ALTA was instrumental in having Freddie Mac's short sale settlement disclosure form altered, to remove the closing agent's obligations (and penalties) for items completely unknown to them – no small accomplishment! Their

work with the CFPB (boy did we stumble saying that quickly) is very encouraging, pressing hard for a simplified, standardized form with clear and reasonable instructions. As you might expect, there is a long way to go, and we will certainly hear more about this process. But, the industry is well represented on Capitol Hill and it appears that our voice is being heard. If there was ever any question as to why a title agency should belong to the ALTA, this conference put that to rest.



## Got A Minute?

Tom Lico, Capital Title

TIME is defined as: the indefinite continued progress of existence.

If you think about it, "time" is the only thing in life we are all given equally. It doesn't discriminate. Ironically enough, it's the one thing we all complain that we don't have enough of. The reality is: time is all we have. We all get 1,440 minutes each and every day. Nobody gets any more and nobody gets any less – 1,440 minutes. That's the same amount of minutes a day that Leonardo Da Vinci had. Same for Shakespeare, Abe Lincoln, Albert Einstein, Martin Luther King, and Steve Jobs. When we say things like, "I just don't have time for that", we're really turning our backs on time. We're denying its power.

So when things aren't getting done, "not enough time" is really just an excuse. It's about energy, focus, and priorities, not time. It's about organizing your day, your week...your entire life. Most people live life like they went to a movie – they sit there and hope something good happens. Meanwhile, the minutes are ticking away.

You think you're in control, but you're not. Your old habits are in control and those old habits are filled with time-wasters. You may believe you don't have time to do anything more, but take a count in a given week of how many minutes and hours are spent watching television, surfing the web, or playing on facebook. Be honest with yourself. You would be surprised how much time you really do have available to you to excel and achieve all that you desire.

We have become slaves to our calendars that are filled with appointments for lunch meetings, kids sporting events, birthday parties, etc. You manage to adjust your day according to what is in your calendar. Here's a tip: if you want to break free of your time-wasting habits in an effort to achieve more, start with making appointments with YOU.

In my calendar, these are labeled as "SI Mtg" – which stands for Self Improvement Meeting. The purpose of this meeting is to work on my strategies for personal growth. I start out each week setting these appointments in my calendar along with an agenda of what needs to be accomplished. It's important to treat each of these appointments as important as any other in your calendar. Should you need to cancel one, reschedule it. Trust me, you have the time.



Greater success in life is not about one big moment, it's about continual incremental steps toward a consistent goal. The famous people I listed above did not have one good year, they had many. They also had many years when life wasn't going well and they doubted themselves. They endured because no matter what obstacles in life they were confronted with, they found the time to keep moving forward with their vision. They chose to make the greatest possible significance in the time they were allowed, because after all... we all get the same.

*Dar's Dabbles*



by Darlene Wilsey,  
Fidelity National Title Group

## WANTED... ENTHUSIASTIC, CAN-DO PEOPLE! ALL OTHERS NEED NOT APPLY!

*A portion of the below enclosed article, entitled "Negativity Sucks (the life out of you)!" first appeared in my newsletter, Blog and LinkedIn Discussion Board, in April 2011. I was reminded of it recently when several of my connections, on LinkedIn, commented on it! As I re-read the post, I felt compelled to update it and submit it for print in the Title Examiner:*

It's likely you have repeatedly heard the sayings, "Enthusiasm is contagious, be a carrier" and "Negativity Sucks (the life out of you)!" but have you fully considered the impact that enthusiasm and negativity have on individual and organizational performance? Employers, do you seek out enthusiastic, eager, or passionate candidates for job vacancies? Do you nurture, reward and protect enthusiasm within your organization, to the same extent that you nurture, reward and protect sales and profit performance? A positive, can-do attitude is both an individual and organization's strongest asset. Have you ever worked with a person who approaches every day and every task with enthusiasm? If you have, you know the power of enthusiasm in the work

place. Like other business skills, possessing and displaying enthusiasm requires training, practice, measurement and coaching. Enthusiasm within an individual and organization is fragile and should be protected to the same extent we protect other company assets. A single negative influence can spread like a virus, throughout an organization and deter even the most positive and focused employee. Negativity comes in many forms, including: complaints, excuses, objections, indifference and realism. Yes, don't fall prey to an individual who attempts to label their



negativity as realism! Some have suggested countering negativity with encouragement and empathy, but experience proves these tactics unsuccessful! Time is

best spent focusing on and working towards individual and organizational goals. Ignore the naysayers (albeit be respectful). Expend your time and energy on replacing complacency, doubts and objections with persistence, belief and flexibility.



### Residential Sales Statistics May 2012

Local Association	2012 May Sales	2011 May Sales	12-11 % Change	2012 May Avg Price	2011 May Avg Price	12-11 % Change	2012 YTD May # Sales	2011 YTD May # Sales	12-11 YTD % Change	2012 YTD May Avg Price	2011 YTD May Avg Price	12-11 YTD % Change
Ann Arbor Area Board of REALTORS®	298	261	14.18%	\$205,650	\$186,953	10.00%	1,139	1,109	2.71%	\$192,906	\$177,277	8.82%
Antrim Charlevoix Kalkaska Association of REALTORS®	47	45	4.44%	\$166,806	\$148,324	12.46%	214	200	7.00%	\$146,722	\$158,245	-7.28%
Battle Creek Area Association of REALTORS®	113	85	32.94%	\$73,670	\$75,824	-2.84%	530	495	7.07%	\$73,873	\$78,004	-5.30%
Bay County REALTOR® Association	126	134	-5.97%	\$65,039	\$68,752	-5.40%	540	587	-8.01%	\$70,938	\$65,814	7.79%
Branch County Association of REALTORS®	41	34	20.59%	\$94,868	\$75,962	24.89%	195	159	22.64%	\$78,464	\$75,405	4.06%
Central Michigan Association of REALTORS®	103	70	47.14%	\$83,761	\$94,023	-10.91%	360	294	22.45%	\$83,872	\$80,968	3.59%
Clare-Gladwin Board of REALTORS®	66	45	46.67%	\$52,433	\$62,541	-16.16%	270	217	24.42%	\$59,081	\$69,014	-14.39%
Detroit Board of REALTORS®	547	667	-17.99%	\$15,180	\$16,667	-8.92%	2,608	2,908	-10.32%	\$14,952	\$14,576	2.58%
Down River Association of REALTORS®	122	127	-3.94%	\$77,878	\$62,634	24.34%	636	570	11.58%	\$73,968	\$66,332	11.51%
Eastern U.P. Board of REALTORS®	42	34	23.53%	\$83,308	\$85,917	-3.04%	157	138	13.77%	\$79,184	\$82,396	-3.90%
Emmet Association of REALTORS®	55	46	19.57%	\$307,860	\$258,326	19.18%	212	174	21.84%	\$223,005	\$211,337	5.52%
Genesee County	538	477	12.79%	\$77,877	\$70,448	10.54%	2,505	2,236	12.03%	\$71,452	\$67,740	5.48%
Grand Rapids Association of REALTORS®	1,211	925	30.92%	\$136,917	\$123,953	10.46%	5,070	4,371	15.99%	\$126,970	\$117,399	8.15%
Greater Kalamazoo Association of REALTORS®	363	253	43.48%	\$129,810	\$140,768	-7.78%	1,396	1,077	29.62%	\$128,718	\$130,213	-1.15%
Greater Lansing Association of REALTORS®	631	460	37.17%	\$105,171	\$103,085	2.02%	2,399	1,890	26.93%	\$95,409	\$103,751	-8.04%
Greater Wayne County	1,490	1,363	9.32%	\$98,554	\$89,587	10.01%	6,278	5,956	5.41%	\$88,076	\$81,313	8.32%
Hillsdale County Board of REALTORS®	31	21	47.62%	\$89,894	\$53,511	67.99%	124	123	0.81%	\$68,052	\$71,342	-4.61%
Huron County	10	12	-16.67%	\$116,203	\$103,758	11.99%	47	31	51.61%	\$82,392	\$97,084	-15.13%
Jackson Area Association of REALTORS®	188	128	46.88%	\$93,456	\$81,282	14.98%	818	678	20.65%	\$86,697	\$71,257	21.67%
Lapeer County	90	84	7.14%	\$109,360	\$89,526	22.15%	386	352	9.66%	\$109,538	\$98,025	11.75%
Lenawee County Association of REALTORS®	118	81	45.68%	\$99,895	\$71,494	39.73%	416	351	18.52%	\$84,068	\$76,767	9.51%
Livingston County	240	209	14.83%	\$164,955	\$157,049	5.03%	961	888	8.22%	\$165,165	\$151,632	8.92%
Oakland County	1,717	1,429	20.15%	\$181,814	\$158,149	14.96%	6,914	6,497	6.42%	\$159,605	\$145,571	9.64%
Macomb County	1,070	921	16.18%	\$99,228	\$88,861	11.67%	4,494	3,947	13.86%	\$93,543	\$85,560	9.33%
Mason-Oceana-Manistee Board of REALTORS®	80	64	25.00%	\$134,322	\$100,064	34.24%	321	265	21.13%	\$119,366	\$108,121	10.40%
Midland Board of REALTORS®	105	72	45.83%	\$148,731	\$137,572	8.11%	332	316	5.06%	\$127,000	\$138,505	-8.31%
Monroe County Association of REALTORS®	141	96	46.88%	\$127,404	\$116,938	8.95%	498	486	2.47%	\$115,968	\$103,981	11.53%
Northeastern Michigan Board of REALTORS®	52	55	-5.45%	\$83,267	\$87,265	-4.58%	227	230	-1.30%	\$77,374	\$72,114	7.29%
Paul Bunyan Board of REALTORS®	135	97	39.18%	\$88,405	\$87,457	1.08%	535	449	19.15%	\$74,858	\$77,851	-3.85%
Saginaw Board of REALTORS®	165	165	0.00%	\$86,355	\$71,804	20.26%	752	756	-0.53%	\$74,555	\$71,734	3.93%
Sanilac County	23	13	76.92%	\$59,256	\$43,810	35.26%	68	44	54.55%	\$55,838	\$44,876	24.43%
Shiawassee Regional Board of REALTORS®	29	75	-61.33%	\$69,405	\$68,414	1.45%	155	334	-53.59%	\$66,021	\$66,228	-0.31%
Southwestern Michigan Association of REALTORS®	287	178	61.24%	\$159,051	\$160,681	-1.01%	1,080	825	30.91%	\$147,584	\$158,376	-6.81%
St. Clair County	118	112	5.36%	\$114,288	\$97,132	17.66%	534	414	28.99%	\$99,380	\$94,910	4.71%
St. Joseph County Association of REALTORS®	52	55	-5.45%	\$92,854	\$100,729	-7.82%	239	247	-3.24%	\$88,232	\$81,505	8.25%
Traverse Area Association of REALTORS®	237	168	41.07%	\$194,436	\$184,340	5.48%	888	747	18.88%	\$179,651	\$152,452	17.84%
Tuscola County	36	25	44.00%	\$73,810	\$73,448	0.49%	110	86	27.91%	\$59,453	\$65,552	-9.30%
Upper Peninsula Association of REALTORS® *	176	164	7.32%	\$101,962	\$96,135	6.06%	668	615	8.62%	\$97,246	\$91,951	5.76%
Water Wonderland Board of REALTORS® *	154	117	31.62%	\$95,445	\$106,455	-10.34%	658	534	23.22%	\$89,072	\$84,991	4.80%
West Central Association of REALTORS®	95	77	23.38%	\$80,997	\$63,835	26.88%	425	359	18.38%	\$78,108	\$69,734	12.01%
West Michigan Lakeshore Association of REALTORS®	374	269	39.03%	\$133,368	\$128,737	3.60%	1,479	1,205	22.74%	\$132,521	\$116,064	14.18%
<b>TOTALS</b>	<b>11,516</b>	<b>9,713</b>	<b>18.56%</b>	<b>\$111,535</b>	<b>\$102,249</b>	<b>9.08%</b>	<b>47,638</b>	<b>43,160</b>	<b>10.38%</b>	<b>\$100,948</b>	<b>\$96,975</b>	<b>4.10%</b>





# Business Strategies Conference

by Jeff Basil, Safe Title



In March, the MLTA Board afforded me the privilege of attending the ALTA Business Strategies Conference in Louisville, Kentucky. I had never attended an ALTA conference before, and I did not know what to expect. I was very impressed with the size and scope of the event and the exhibits. There was some very helpful information shared by the presenters and exhibitors. Both days, after a general session for all attendees, we had a number of different professional development sessions to from which to choose. In addition, there were more than 20 exhibits, including Ramquest, SoftPro, RynohLive, Simplifile, and October Research, just to name a few.



The Business Strategies Conference exceeded my expectations and I was able to bring back some valuable information that I know will benefit Safe Title in the future. If you have the opportunity, I encourage you to attend this conference in the future. Below is a brief summary of my experiences:

## Monday, March 26, 2012

### General Session

#### 1. Explaining a Policy So Grandma Understands

*Speaker: Chris Abbinante, Fidelity National Title Group & ALTA President*

Chris spoke about how important it is that we, as industry professionals, are able to explain the title policy in terms so that the average consumer can understand what is covered and what is excluded. Chris also emphasized the need for those of us who work in the industry to educate the public about what we do. He said we need to "go out and tell our story" because when outsiders tell it, they often portray us in an unfriendly light and he gave some examples of unflattering stories in the media about our industry.



#### 2. A New HUD-1 is Coming... Will you be ready?

*Speakers: Mary Schuster, Ramquest, Alison K. Gareffa, Old Republic & Celia Flowers, East Texas Title Companies*

The speakers discussed the plans of the Consumer Financial Protection Bureau to roll out a new GFE (which will now be called "Loan Estimate") and HUD-1 (which

will now be called "Settlement Disclosure"). We are once again going to be required to learn and implement new forms. The new proposed rule is scheduled to be released July 21, 2012, although the new forms will probably not be required until 2014. In their effort to make things more consumer friendly, the new HUD/Settlement Disclosure will be five pages instead of three. Most importantly, it appears that there will be a requirement that buyers receive a final Settlement Disclosure three days prior to closing.

### Professional Development Sessions

#### 1. Finding the Right Path

*Speakers: Roger Lubeck & Christopher Hanson, Corporate Behavior Analysts, Ltd.*  
Mr. Lubeck and Mr. Hanson have written a book entitled Finding the Right Path in which they emphasize implementing "blue ocean strategies" rather than "red ocean strategies." Their ideas were inspired by another book entitled Blue Ocean Strategy written by W. Chan Kim and Renee Mauborgne. The gist is that a "blue ocean strategy" is innovative and brings new products or concepts to the marketplace. By contrast, the presenters feel that our industry continues to utilize "red ocean strategies," e.g., competing with each other on price and turn-time, which in the end hurts the industry as a whole.

#### 2. Creating a Results-Driven Culture

*Speakers: Darryl Turner, The Darryl Turner Corporation & Mike Cranmer, Stewart Title Guaranty Company*

The basic message of the presentation was that, in managing our organizations, we need to make specific people accountable for sales. When everyone is responsible, no one is responsible.

#### 3. The Future of Agent/Underwriter Relationships

*Speaker: Eugene R. McCullough, Southern Title Insurance Corp.*

Mr. McCullough was the President of Southern Title Insurance Corp, a regional underwriter, and he warned agents that times have changed. Years ago, underwriters were eager to sign new agents and, to a certain extent, bring as many agents as possible under their umbrella. Now agents make underwriters nervous and they need to do everything in their power to make themselves attractive to underwriters. For example, agents should show the quality of their search practices and their reconciliation practices, etc. He then shared a story about how one rogue agent took down his entire company.



## Tuesday, March 27, 2012

### General Session

#### Fighting Fraud in the Current Market Place - Panel

*Speakers: Jan Clark, Ersnt Information Services, Frank Pellegrini, Prarie Title & ALTA President-elect, Andy Crisenbery, eLynx, Erika Meinhardt, Fidelity National Title Group, Richard Bramhall, Westcor National Title Insurance Co. & Penny Reed, Wells Fargo Home Mortgage*

The Panel discussed a survey of current thoughts about the existence of fraud in today's market and strategies for combatting fraud.

### Professional Development Session

#### Paperless Transactions = Maximum Efficiency

*Speakers: Mark Monacelli, Director of St. Louis County, MN Public Records and Valuation, Mike Kirby, GreenFolders Inc., Tim Conley, SoftPro 7 Vicki DiPasquale, Simplifile*



The panel advised that the day of truly paperless transactions is coming. They discussed a "Model 3" transaction, which is a truly paperless transaction. That does not mean scanning, which is digitizing a paper record. Model

3 involves no paper at all, and everything, including the notary, is paperless. They showed how paperless processes have improved efficiencies at their own companies. One interesting statistic they gave: 74% of everything we put on paper... we get electronically. We then go to the trouble of putting on paper.

*Photographs courtesy of Shawn Sullivan, ALTA*



# COUNTY SPOTLIGHT

## CLINTON COUNTY

### REGISTER OF DEEDS



Michelle Wilsey  
Register of Deeds



Artist's Rendition of 1869 Courthouse

In the October 1855 session of Clinton County's Board of Supervisors, the question of moving the county seat from Dewitt to St. Johns first arose. A year later, the St. Johns supervisor, called for the move to his community, providing residents there made a one-and-one-half acre building site available. In December 1857, county offices were moved from Dewitt to Plumstead Hall in St. Johns.

The original building was started in 1869 and completed in 1872. It faced several delays including when the courthouse dome was struck by lightning in 1871! With several additions, the old courthouse served Clinton County's needs for the next hundred years.

On June 22, 2000, Clinton County celebrated the dedication of their new courthouse. The 117,000 square foot structure is definitely something for the mid-Michigan region and county seat of St. Johns to feel proud about. Instead of just demolishing an old landmark and building a modern facility in its place, Clinton County has honored the past by incorporating it into their future with this new facility.



## MICHELLE WILSEY

### REGISTER OF DEEDS:

I am a graduate of Michigan State University with degrees in Economics, Political Science (BS) and Information Technologies and Services (MA). Most of my professional career has been in the field of utility industries and regulation. I quit working full-time when my 2nd daughter turned 2. I continued consulting in the

utility field but also became involved in local politics. I was elected for two terms as township clerk. I was appointed to the position of county Register of Deeds upon the early retirement of the Register. It has been a great personal and professional experience in the last year.

#### How many team members are in your department?

There are 2.5 experienced staff members in addition to the Register. I work very closely with staff and clients to learn all aspects of our operation and the industry in general.

#### What is the approximate number of documents your team records annually?

In recent years 55,000-60,000 documents per year.

#### What are some of the advancements that have occurred?

A digital recording system was in place and working well when I took office. My management efforts have focused on improving performance through staff training, technology and process improvements. The most significant change has been one of perspective. I view our role as managing a critical component of the economic and financial system. We have to assure the integrity of the recording system but also meet the needs of users. It is a balance of private interests and public objectives. I value the input of our clients in the industry and have sought the input of users of our system to drive improvements. We measure performance goals in critical areas such as: same day recordings, next day certification, original document return, and back indexing. We have reduced the fees of our on-line images based on cost studies, implemented robust e-recording, created direct access to records for local units, worked with the treasurer to electronically submit documents, and updated the web site. We are also reassessing business practices and learning how to use available technology to streamline business processes. Even though document volume has increased and staff has decreased in the past year, overall performance has improved.

#### How can title agencies and/or the MLTA assist you with maintaining the integrity of recording of public records?

Communication, education, automation and performance evaluation. Our county is one of many that combined the Register of Deeds Office into a larger Clerk/Register organization. Given the scope and demands of their office, combined managers generally do not have the depth of knowledge nor the opportunity to learn the industry to the same degree as stand-alone Registers. Also, ROD staffs have been downsized with the economic downturn and many experienced staff are nearing retirement. These realities mean there is less opportunity for internal training and knowledge transfer. MLTA can serve as an important source of collaborative education. MLTA can also play a role in encouraging the industry adoption of automated processes like eRecording. This advances standardization and allows ROD staffs to spend more time on high value activities such as recording acceptability, quality index information, certification, troubleshooting and less time on lower value processes like sticking, sorting, scanning and stamping. Finally, public decision-makers (County Boards, Administrators, Elected Officials) increasingly must report and rely on systematic data for decision-making (e.g., county dashboards, revenue sharing tests). Adoption of independent, third-party performance measurement and monitoring of public recording systems may be very beneficial to the future of the industry.

#### Any special activities you like doing in your spare time?

What is spare time? Seriously, I have an incredible family that keeps me very busy. I travel when I can. My 14-year-old daughter and I visited Spain last month. I am relearning Algebra II and reading the Hunger Games trilogy to catch up with my 11-year-old daughter. My 7-year-old son plays baseball and has a fantastic social calendar. My husband and I bought an old farmhouse that we are restoring very slowly without grants from the foundation. I highly recommend to anyone reading this article to think about charitable contributions to your local community foundations; they truly are for good, forever.



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# Transfer Taxes and New Construction: A Legal Update



by Gregg Nathanson,  
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Can builders and developers (legally) avoid paying Michigan's state real estate transfer tax on new construction? The answer: Maybe.

The Michigan Court of Appeals recently considered this issue in *Eastbrook Homes v Department of Treasury*, decided April 24, 2012. In this case, the developer and affiliated builder were found liable for transfer taxes, penalty and interest in excess of \$1,000,000.

The facts are not in dispute. Developer and Builder used the following business model: Developer conveys a vacant platted lot or site condominium unit to Buyer by warranty deed, and pays the transfer tax on the value of the undeveloped property at the time of the conveyance. When Buyer purchases the unit or lot from the Developer, Buyer also enters into a building contract with Developer's affiliated building company to construct a residence on the property. The purchase agreement between Buyer and Developer includes the value of the vacant land without the value of the later constructed home. Similarly, the contract between Buyer and Builder includes only the cost of construction, not the value of the underlying land. So far, so good.

Unfortunately for the Developer and Builder, there are additional facts. As security for payment of the contract price under the building contract, Builder requires Buyer to quit claim the property to Builder. Once construction is complete and Buyer pays for the home, Builder quit claims the property back to Buyer.

The case involves interpretation of an exemption from Michigan's State Real Estate Transfer Tax Act. MCL 207.526 states that, "The following written instruments and transfers of property are exempt from the tax imposed by this Act... (d) A written instrument given as security or an assignment or discharge of the security interest". The quit claim deed from Buyer to Builder states that the parties' intend to use the deed as security, and therefore, the instrument is exempt from Michigan state real estate transfer tax under MCL 207.526(d). The quit claim deed from Builder back to Buyer states that it was given to discharge a security interest, and is therefore likewise exempt from transfer tax pursuant to MCL 207.526(d).

So, does the state real estate transfer tax apply to (a) the quit claim deed from Buyer to Builder, transferring title to the vacant land ostensibly for purposes of granting Builder a security interest and/or (b) the quit claim deed from Builder back to Buyer, intended to discharge the security interest?

The Michigan Tax Tribunal ruled in favor of the Developer and Builder. The Tax Tribunal acknowledged several facts favorable to the Developer and Builder. The Court acknowledged that the Developer is in the business of taking raw, unimproved land and developing it into divisible parcels of property; the Builder is in the business of residential construction; the Developer and Builder are separate and distinct legal entities; both

companies have a legitimate business purpose, other than avoiding transfer tax, to maintain and operate the building company and development company as separate entities, including, without limitation, complying with the condominium act and land division act and tort liability avoidance; the Builder has a legitimate business interest to maintain physical possession of the property throughout construction; and the parties acted consistent with their intentions set forth in the transaction documents.

The Tax Tribunal concluded that the quit claim deeds should be treated as creating and discharging a security interest, and were exempt from payment of the state transfer tax. The Tax Tribunal reasoned that the statute does not require a security interest be created by way of a mortgage. The quit claim deed from Buyer to Builder was really an equitable mortgage and therefore, satisfied the transfer tax exemption. Similarly, the deed from Builder to Buyer was exempt because it merely discharged that equitable mortgage.

The Michigan Court of Appeals disagreed, noting that exemption statutes are to be strictly construed in favor of the taxing authority. The Court of Appeals refused to interpret the quit claim deed from Buyer to Builder as "an equitable mortgage." Therefore, the exemption from transfer tax for instruments used to create or discharge a security interest was not applicable. The quit claim deeds transferred all title to the property from Buyer to Builder, and from Builder back to Buyer. Unlike a mortgage, the quit claim deed from Buyer to Builder did not reserve to the Buyer any property rights.

The deeds were taxable because they conveyed an interest in the property, for consideration, beyond creating or discharging a security interest.

What lessons can Developers and Builders draw from this Court of Appeals decision? Based upon the language of the decision, it appears that this Court of Appeals panel may

have reached a different result had Buyer granted the Builder a traditional mortgage instead of using a quit claim deed. Second, even without a mortgage, the Builder would have lien rights under Michigan's Construction Lien Act. Third, the Builder could have recorded a claim of interest or other instrument against title, to further limit the Buyer's ability to sell (or further encumber) the property, free and clear of the Builder's interest. This case leaves open the door to the proposition that, if structured properly, a Builder may be able to legally protect itself and still avoid paying transfer taxes on the value of a newly constructed home or building.





# ALTA ISSUES REVISED FORM OF THE CLOSING PROTECTION LETTER

by Phillip J. Neuman, Nadis & Neuman, P.C.

The Closing Protection Letter (“CPL”) has been issued by underwriters since the 1970s. Underwriters began issuing CPLs in order to encourage lenders to utilize title agents for the purpose of conducting closings. Lenders were concerned, however, that if the title agent committed an error or failed to properly disburse the lenders’ funds, the lenders would have no recourse. These concerns were well founded, because the title agent is not the agent of the underwriter when it is conducting a closing. The typical agency agreement between the underwriter and its agent states that the agent is only authorized to issue commitments and policies underwritten by the underwriter. Thus, in the absence of a CPL, the lender has no recourse against the underwriter if the agent mishandles funds or documents. This is especially important if the agent fails to comply with the requirements for issuing a title policy. If a policy is issued, the insured lender will at least be able to collect to the extent there is a defect in title. However, if there is no policy, then the lender will have no recourse of any kind for its loss.

In 1987, the American Land Title Association (ALTA) promulgated a standard form of closing protection letter. This form was widely adopted by the major underwriters, but failed to include a number of protections for the underwriter. In a recent case in US District Court for the Eastern District of Michigan, JPMorgan Chase Bank v First American Title Insurance Company, the weaknesses of the letter were exposed. In that case, the original lender was Washington Mutual Bank, which had given a \$4.5 million loan to what proved to be a straw borrower. The title agent stole part of the loan proceeds. First American Title had issued a CPL to Washington Mutual using the 1987 form. Washington Mutual was placed into receivership by the Office of Thrift Supervision, and the FDIC, as receiver for Washington Mutual, sold all of Washington Mutual’s loans, including the \$4.5 million loan, to JPMorgan Chase Bank in a bulk sale. The FDIC contended, however, that it retained the CPL claim against First American Title. First American Title claimed that the CPL claim could not be severed from the title claim that was made by Chase. The District Court rejected First American Title’s position and ruled that the CPL claim was severable from the title claim. The District Court also ruled that even though First American Title paid out \$3,000,000 to resolve the title claim tendered by Chase, it was not entitled to a credit in that amount with respect to the FDIC’s claim for damages under the CPL. The Court held that because the CPL covered different risks than the title policy, in the absence of any language in the policy tying the two together, there

was no basis for allowing the credit. Additionally, the District Court rejected First American Title’s attempt to argue that Washington Mutual’s poor underwriting contributed to its loss. The court ruled that the fraud of the title agent was the most direct cause of the loss, and contributory negligence is not a defense to an action for fraud. Following a jury trial on the issue of damages, the jury awarded the FDIC over \$2.2 million.

In December 2011, ALTA promulgated a new CPL that narrows the scope of the underwriter’s liability and addresses many of the issues raised in the JPMorgan Chase case. For example, the 1987 form provided indemnification for actual loss arising out of “fraud or dishonesty of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with such closings.” This is a fairly broad definition, and fraud of any kind on the part of the agent could give rise to liability under this form of CPL. The 2011 form included negligence of the agent as a covered matter, but limited the breadth of this provision to actual loss arising out of “fraud, theft, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closings to the extent that fraud, theft, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.” Thus, to the extent an agent steals closing funds that were destined to payoff a third-party non-lien creditor, for example, those funds would not be covered by the CPL.

Another difference between the 1987 form and the 2011 form of the CPL relates to the exclusion for the lender’s own fraud or negligence. While the 1987 form did not contain any such exclusion, the 2011 form explicitly excludes loss arising out of the “fraud, dishonesty or negligence of your employee, agent, attorney or broker.” Therefore, the insurer would be entitled to raise the affirmative defense of negligence or fraud, particularly if the mortgage broker is a participant in the fraudulent scheme.

As noted above, the 1987 form of the CPL failed to contain any dollar limitation of liability, and was not tied in any way to the title policy. The lender is simply entitled to reimbursement for all actual loss. The 2011 form of CPL specifically limits the underwriter’s liability for loss in two different ways in order to avoid any possibility of a double recovery by a lender. First, the limit of liability is directly tied to the value of the subject property. To the extent the value of the property has gone down after the closing, the underwriter will be able to reduce its exposure

under the CPL. Paragraph 4 of the Conditions and Exclusions now states as follows:

4. The Company’s liability for loss under this letter shall not exceed the least of:

- a. the amount of your settlement funds;
- b. the Company’s liability under its title insurance policy at the time written notice of a claim is made under this letter; or
- c. the value of the lien of the Insured Mortgage, or the interest in the land insured or to be insured under the Company’s title insurance policy at the time written notice of a claim is made under this letter.

Second, the limit of liability is also reduced to the extent that the underwriter has made a payment to the addressee or the owner of the indebtedness under the policy or from any other source. It would appear, however, that a payment by the underwriter to a third party (such as a prior lender) would not qualify as a credit against the amount owed under the CPL. Paragraph 5 of the Conditions and Exclusions states as follows:

5. Payment to you or to the owner of the Indebtedness under the Company’s title insurance policy or policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to Section 10 of the Conditions of the policy.

The combination of these two new paragraphs should dramatically reduce the dollar amount of claims under closing protection letters. Furthermore, the fact that the liability is tied directly to the policy could very well avoid the possibility of the CPL being severed from the policy, as was the case in the Chase case. The numerous changes to the CPL also make it extremely unlikely that an underwriter could be liable for damages in an amount exceeding the amount of the title policy.

There is no doubt that the result in the Chase case would have been different had the 2011 form of CPL been utilized.



*Phillip J. Neuman is a shareholder at the firm of Nadis & Neuman, P.C. in Farmington Hills, Michigan. He specializes in commercial and residential eviction matters, title insurance law and construction lien law, and has given numerous lectures in each of these areas. Neuman has been practicing in the real estate field since his admission to the Michigan and Wisconsin bar in 1983.*



## Strategic People Reminders for the Busy Executive

by Scott Patchin, The trU Group

### What I'm hearing

Why would I do succession planning?

### What it means

What is succession planning? Here are some common responses I hear:

- It is a legal and financial plan for passing a business on to the next generation of family members.
- It is about a board creating a plan to quickly respond to a CEO/Senior executive departure.
- It is a process for identifying key people that could take the place of senior leaders – both people that are ready now and ready in 1-5 years.
- It is a process human resources make us do once a year.

The answer is that it can be any of these, wherein lies the problem. It is both confusing and disconcerting, because underlying message is “the plan for when I am gone”. Mortality is an unpleasant topic, and as a result only 35% of organizations have them.

For leaders at all levels this is a critical process. It is about planning for the future for not only your business, but your best people. My standard rule for a successful performance conversation is 30-30-40. 30% of time spent on past performance, 30% on the present, and 40% on the future. It is impossible to get to a future focus of 40%, especially with a leader, without some form of succession planning.

### What you should do

First, stop calling the people part succession planning. In working with leaders or boards, I refer to it as a talent review of your most valuable people and most critical roles. The next step is to make two lists:

First List: Name the people in your organization that, if they left suddenly, would cost you sales, expose you to a legal risk, or would make your life miserable for an extended period of time. For each one of these people, ask three questions: Have I given them a compliment in the last month? Have they gotten a meaningful reward in the last year? Do they have a development plan? Do I have a future spot in the organization that matches their career goals? If there are NO answers to any of these questions the action plan is to make these all a YES and to keep them there.

Second List: Name the critical roles in your organization that must have great people in them for the company to be successful. Hint: All executive roles should be included, and feel free to consider roles at any level in the organization. For these roles ask two questions: Are at least 80% of the people in these roles A or B/B+ players? Do I have a plan for the B-/C players? Do I have a list of people I would plug into these roles if someone left? Who were the B-/C players last year and where are they? It is that simple, but obviously, not that easy.

Check out these blog postings on this topic at [www.thetrugroup.com](http://www.thetrugroup.com):

- 8 Questions To Ask Before Starting Succession Planning
- Succession Planning: Why We Don't / 3 Reasons We Should



Looking to create this habit across a group of leaders in 2012? Is it time to rebuild some of the habits and culture around investing in your people? Contact [Scott@thetrugroup.com](mailto:Scott@thetrugroup.com). ©2012, Scott Patchin

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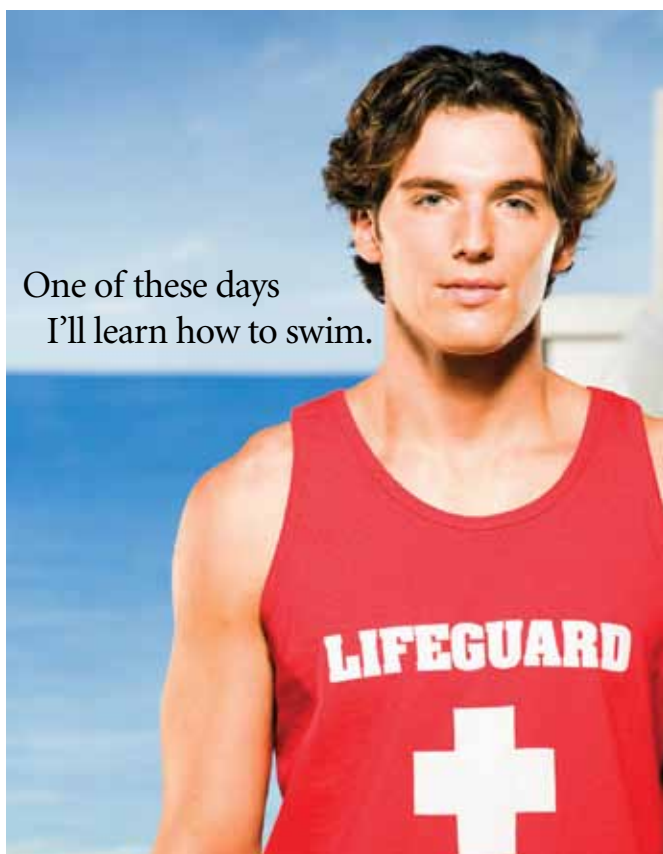
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## *MLTA Upcoming Events*

- July 15-17 MLTA Summer Convention  
*Grand Traverse Resort*
- October 23\* Legislative & Membership  
Committee Meeting (\*note change)
- October 24\* Fall Education Seminar  
*Mt. Pleasant, MI* (\*note change)
- November 7 Fall Education Seminar  
*Livonia, MI*
- July 14-16, 2013 MLTA Summer Convention  
*Crystal Mountain Resort*

## *ALTA Events*

- October 12-15 2012 Annual Convention  
Charleston Place  
*Charleston, SC*



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