



THE TITLE EXAMINER

A PUBLICATION OF THE MICHIGAN LAND TITLE ASSOCIATION

WINTER 07/08

Wishing You A Happy and Prosperous New Year!

- from your
Title Examiner Staff

**Bob Wuerfel, Laura Veldhof
and Jill Smalldon**

**2008 Mid Winter
Convention is just around
the corner! See page 8
for more details.**

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Enough Chicken Little!

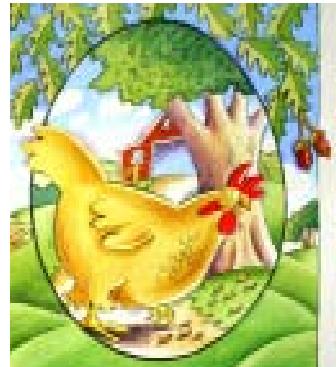
by Darlene Wilsey, Account Executive, LandAmerica Financial Group

"The sky is falling, the sky is falling!" I don't know about you, but I'm tired of reading, hearing and talking about how bad things are. Newspapers, blogs, television programs, the local coffee shop . . . we can't escape hearing about the budget deficit, housing market, oil prices, etc. How are we supposed to stay motivated, if everywhere we look there are excuses to fail?

How? Initially, we make the right choices. We choose to **take the initiative** rather than be content with where we are at. We choose to adopt a *can do* versus a *can't do* attitude. We choose to **plan for success** as opposed to *go with the flow*. We choose to hold ourselves and our employees **accountable** to progress versus accepting excuses for status quo. And as leaders, we choose to consistently and frequently **communicate expectations and goal status to our employees**.

Once we have set the stage for change, by making and implementing these choices, it is important that we follow it with **persistent, focused and unrelenting business generating activity**. We must refuse to be distracted! We must focus our time and efforts on clients who are *doers and movers and shakers*. We must **become MOVERS and SHAKERS!** We must get everyone in our organization involved in driving revenue. And most importantly, as leaders, we must **lead by example**, to ensure that we serve as a model for our employees to emulate.

Now more than ever, it is important that we take advantage of every resource available to us, including: the individual skill sets and talents of our employees, as well as your *underwriter's* products and services. Together, we can be successful in working our way through this market downturn.



How do you get started? Consider the following:

1. Ask each of your employees to identify and execute two business generating tasks, per day. Some suggestions include:

• **Closer:** Follow-up with the listing agent, selling agent and lender, regarding their closing the previous day. To qualify as a business generating task, however, this follow-up call should include asking if they have another transaction that you can assist them with.

• **Examiner:** Follow-up with the appropriate party regarding a noted requirement on a commitment, to give them a heads up and/or to offer your assistance in satisfying the requirement. Ask if they have another transaction that you can assist them with and/or welcome them to call you with questions on their next transaction.

• **Receptionist:** Greet customers and thank them for choosing your company to service their title insurance and closing transaction needs. He or she may say, "We hope that you choose ABC Title for your next transaction, as well."

• **Sales Person/Manager:** Focus on **producing** REALTOR and Lender prospects. Let your closers maintain the business. Familiarize yourself with each prospect's business model and promote relevant resources.

Continued on page 2

MLTA

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Cont. from page 1

2. Require that these and/or other specific business generating tasks become part of each employee's daily routine. Ask them to keep a log of these tasks, and hold them accountable by following up with them on their progress.

3. Provide opportunities for your employees to practice these business generating tasks, via role playing at staff meetings.

4. Conduct short (15 minute) daily or weekly meetings, specifically for recognizing and following up on these business generating tasks and to solicit ideas on how you can differentiate your company from your competitors. Acknowledge the success stories and follow-up individually with those who are not executing the required tasks. Use these meetings to communicate **order status and goal achievement**, as well.

5. Work with your underwriter to ensure that you take advantage of any underwriter products and services that may assist you in generating business, in 2008.

Together, we will overcome these challenges! Together, we will succeed! And together, we will be better (more skilled and cross-trained) for having experienced these conditions! And for those of you who have read Chicken Little, remember, it was just a small acorn that fell, not the sky! ☺

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LAURA McMAHON LYNCH, PLC

LML

plc

Laura McMahon Lynch, licensed in Michigan since 1983, is a former Assistant Attorney General who represented the State of Michigan Homeowner Construction Lien Recovery Fund and prosecuted licensure violations by Residential Builders and Real Estate Brokers. Returning to private practice in 2000, Ms. Lynch now specializes in real estate related litigation and conflict resolution including:

- defense of title claims
- quiet title actions
- construction lien and bond claims
- mortgage foreclosures
- general debt collection

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



Get to know your fellow MLTA members.

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Account Manager/Business Development
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Canton, Wayne County, Michigan



MLTA Involvement:
Education Committee and more to come

Personal Interests: Cooking, Gardening and Entertaining

Something about you: I serve on the Clarenceville Board of Education as Trustee, as Committee Chair Person AND Tiger Den Leader for Cub Scout Pack 279. I am involved with Boy Scout Troop 782 and serve as a traveling soccer Mom. In the past, I have served as a board member to Friends of Grandview (PTO for Grandview Elementary School) and Co-Chaired Flag-Football for the Elementary and Middle Schools. I live in Livonia with my husband, John, and our two (very active!) boys, Alex, who is 12 and Jacob, who is 8.

Lisa A. Cincinelli
Vice President & State Manager
Old Republic National Title Insurance
Petoskey, Michigan



I have been with Old Republic for 13 years, the last two as state manager. Currently, I am serving on the MLTA Convention and Membership Committees.

To relax, I enjoy gardening, amateur decorating, and the great outdoors of Petoskey. Of course, there is nothing better than watching a good football game, especially with Brie, my faithful Bichon Frise.

Constance J. Curio

Assistant Vice President

Professional Abstract and Title,
A Lighthouse Title Group Member
Sturgis, Michigan



MLTA Involvement: Past President (2001) 3rd woman to hold that office. Recipient of Robert J. Jay Award (1996). First Editor for Title Examiner. Served on Communications, Public Relations, Membership, Education & Legislative Steering Committees. Created first membership Directory, initiated website at www.mlta.org and testified in Lansing for MLTA.

Other Involvement & Recognitions: Past President Sturgis Exchange Club (2000). Current Legislative Chair of St. Joseph County Association of Realtors. Recipient of the St. Joseph County Association of Realtors Award for Affiliate of the Year. Freelance Reporter & Photographer for the Kalamazoo Gazette, South Bend Tribune, Three Rivers Commercial-News and radio station WLKM out of Three Rivers, MI. Member First United Methodist Church – served as Administrative Secretary & Co-Chair of the Education Department.

Something About You: Married to Louis Curio since May 2007. One son, Alex – 22, one stepson, Nate – 19, one stepdaughter, Alicia – 32. Sisters, Melissa & Sharon, who are in the title business with me that recently sold to Lighthouse. Brother, Michael at Grand Traverse Title in Traverse City. Father, Darrel Farrer, in the title business for 50 years. I have been in title business for 34 years. I began working for my father in Centreville & Sturgis, ran Southwest Title Co. in Kalamazoo, and owned Professional Abstract & Title Guaranty Company with my sister, Melissa, before selling to Lighthouse Title Group.



TITLE TIDBITS...

Don't Leave Me Out

by Donald J. Drago, Austin TX

Upon the review of a document shown as an exception on a commitment for title insurance covering a tract of land in Harrison County, this "restrictive covenant" found in a Warranty Deed from the Smiths (the sellers) to an investment entity:

Item No. 11 — Buyers must invite the Smiths over for BBQ or party at least twice yearly. Smiths will bring beer.

"Yes Mr. Jones, I would recommend..."

Jacquie Brink, Michigan Agency Rep, Chicago Title/Security Union, OH

Unless you are an attorney, do NOT give legal advice at the closing table. Only licensed attorneys are authorized to practice the law. There is some question whether or not an attorney should remain neutral, which is recommended. You are acting as a neutral party during the transaction, so you should remain that way. Remember it is not your duty to police the transaction for either party.

MLTA FALL SEMINARS COVER A MYRIAD OF TOPICS

by Jilanne Z. Scholtz, VP/State Manager - United General Title Insurance Co

Michigan Land Title Association's 2007 Fall Seminars were well attended and drew both members and non-members to the very informational sessions. As in the recent past, the seminars were held in Mt. Pleasant and Livonia, respectively. Mary Lou Hartwell presided over her first education seminar and Allan Dick, Chairman of the Education Committee acted as our host for the day.

Tim Ward, in Mt. Pleasant, and Fritz Benson in Livonia, represented Michigan Legislative Consultants, our lobbying firm in Lansing. Both discussed the recent changes in the Michigan Income Tax and the proposed service Tax. At the November 7, 2007 meeting, Fritz Benson reported that it was widely thought that the service tax would be repealed and it was hours after it officially went into effect. Ward and Benson discussed the idiosyncrasies of the services tax, outlining services that would be taxed, astrologers, ski resorts and baby shoe bronzers, but not rounds of golf.

Topics for the sessions included Mobile Homes Sales and Mortgages, Mutual Indemnification Agreement, Mortgage Foreclosure Abandonment Issues, Short Sales, IRS investigation of Real Estate Fraud and Split Closings.

Daniel Grimshaw of Mid-State Title Services in Vassar and Eric Kreckman of Gladwin County Abstract in Gladwin presented a very informative session on mobile home sales. They explained in detail how to process the Affidavit of Affixture for mobile homes. Dan and Eric both expressed that working with the State of Michigan Department of Labor and Economic Growth expedited the process.

Eric Manley, Esq. of Three Lakes Abstract and Title in Roscommon reviewed the Mutual Indemnification Agreement. He also gave a detailed explanation of what defects this agreement covers and which are excluded.

Unfortunately, the area of Foreclosure and Short sales are necessary topics and both were addressed. Michael Reynolds, Esq. of First American Title Insurance Company reviewed abandonment issues and explained how to determine the applicable redemption periods. Doug Smith, Esq. of Land America fame, explained "short sales", (whereby the underlying lender takes a discount on their mortgage to induce a sale of a property). He discussed problems sometimes associated with the sales, including equity skimming and mortgage fraud.

Stephen Moore, Public Information Officer from the Detroit Field Office of the Internal Revenue Service gave another perspective on Real Estate Fraud from the eyes of the IRS. He related many stories and techniques used in discovering fraud including the forensic lab that can tell what year a document is signed by the year the ink was produced.

Linda Hinshon-Carter, of LandAmerica/Lawyers Title spoke on the very timely subject of split closings. A recent trend in some areas of the state, Linda discussed the issues of this sensitive subject. With everyone trying to get their piece of the pie these days, she outlined the areas of concern, recording gap, simultaneous issues, fees and handling of the recording. Overall, her suggestion was to make sure all parties agree and are on the same page up front. ☺

Michigan is Not Alone - A Mid-term Interview with MLTA President, Mary Lou Hartwell

After spending time at the 100th American Land Title Association Convention in Chicago, our Michigan Land Title Association President, Mary Lou Hartwell, came to the conclusion that Michigan ranks in the middle of other states when it comes to problems like dealing with the Register of Deeds offices and e-recording. Often Michigan is at the top of some undesirable list like foreclosures. Instead she found a lot of common ground with other states.

During her first six months in office, the social security legislation passed which required ROD to remove those numbers from recorded documents before selling copies of them. This included bulk sales. Great news for those of us still maintaining title plants. And she says the Michigan Register of Deeds is working to speed up the recording process by possibly eliminating tax clearances. The need for the tax clearance has changed, she said, with the shorter tax foreclosure process. Without going through the tax clearance process, possibly the step of documents going through the land resource department would be eliminated also.

One thing Hartwell wanted to impress on members – funding the MLTA PAC is critical. "It does affect YOU!" she says. It's one of the most important parts of our Association. With term limits in Michigan, it's imperative to educate the incoming legislators. A lot of our PAC money is spent on this cause. She also hopes to see the entry book legislation pass. "We really need to have it done," she says.

"It's an unprecedented time for agents in Michigan" Hartwell says. There still is a need for the small offices where people belong to the local service clubs, she believes. She likens the local title agency to community banks. Like some banks there are title companies that have grown too large and may not provide the best service. This is where the small office can step in and offer great service. There are also more agents than underwriters on the current Board of Directors, allowing for the agents to have a strong voice in our Association.

When asked if she would go through the board experience again, Hartwell said "Yes, absolutely – it has been a fascinating experience!" Having been in her shoes, this writer asked if she thought the method of board member selection should change and received an emphatic NO. This process

ensures that there are MLTA members on the board that are experienced, she added. After serving on committees and chairing a committee, that member understands the needs of our Association. Fortunately, in the past few years, even with down sizing of offices, there continues to be a bumper crop of members likely to become board members and move up through the chairs.

While this interview could not compare to the one Hartwell gave NPR (National Public Radio) she still welcomed the opportunity to communicate with the membership. "Communication is vital" she says. One more method of communication will be demonstrated with the updated version of the MLTA website due to debut any day now. She is looking forward to the Spring Educational Seminar, and the 2008 Summer Convention in Frankenmuth. While the typical smile worn by outgoing Presidents of MLTA hasn't begun to appear yet, Hartwell looks forward to talking with members and invites any member to contact her. ☺



Centennial ALTA Convention

The 2007 ALTA Annual Convention was held in October in Chicago with a record number of over 700 attendees. The convention this year was recognized as the Centennial Celebration for the ALTA, and the attendees shared in the special events recognizing the 100 years of successful operation of the ALTA. Mary Lou Hartwell, President of the MLTA represented our association. Several other members of the MLTA were also in attendance.

While the convention had the usual outstanding small group education sessions and celebrity general session speakers, by far the most important undertaking by the ALTA was the adoption of the "Principals of Fair Conduct". As you are all aware, our industry continues to be on the front line for criticism by regulators, elected officials and consumers. The ALTA launched *The Title Industry Consumer Initiative* last September and the "Principals of Fair Conduct" are the cornerstone of this effort to cast a positive light on the things that are important to the members of the ALTA. These principals essentially raise the bar for ethical and lawful behavior within the title industry.

The ALTA has asked that state associations and interested companies voluntarily adopt the principals. "I personally encourage you to adopt this program in your association or company," said ALTA President Greg Kosin, "so we can have a united front before legislators, regulators and consumers to show we are serious about addressing the concerns in the GAO report." The Chief Executive Officers of all the major underwriters spoke briefly at the convention of their commitment and support of this effort.

The MLTA Board of Directors adopted these principals at its November 2007 meeting and encourages members to embrace the initiative including the "Principals of Fair Conduct".

The five principals can be downloaded from the ALTA website: www.alta.org/initiative/index.cfm. There are also concrete action steps that accompany each of the principals that may be downloaded as well.

The Convention wrapped up with a down-to-earth presentation by General Colin Powell. Powell talked to the packed room about the world after September 11, 2001 and the causes he has been passionate about since leaving the Bush Administration. Powell then visited the ALTA-sponsored Habitat for Humanity house after the session and met with some ALTA volunteers and the family who will move into the house.



Mary Lou Hartwell, MLTA President, talking with a representative from Texas.



ALTA President, Greg Kosin speaking on the principals of fair conduct.



Bob Wuerfel, Lighthouse Title & his wife Shayne were among several from Michigan in attendance.



Photos reprinted courtesy of www.ALTA.org.



General Colin Powell - Guest Speaker.



General Colin Powell, Tom Leavitt, Old Republic Title & his wife Linda.

I SELL TITLE INSURANCE

by Mike Pryor, President & CEO, Lenders Title Co., AK

I sell title insurance.

Some people don't like to say they "sell" for a living, much less that their product is title insurance.

I sell title insurance.

I "sell" it because I believe in it.

I do not hang my head and apologize for selling title insurance. I provide a thorough and accurate search of the title, resolve ownership issues, provide lien records, keep the courthouse records accurate, facilitate collection of government taxes and assessments, and require proper conveyances and acknowledgments. My work keeps the housing market and the overall economy from being bogged down by inaccuracy, uncertainty and fraud. My vocation protects my neighbors from falling into disruptive disputes over their property rights. My community is better for the work I do.

I sell title insurance.

I cannot imagine allowing a family member, friend or acquaintance to purchase real estate without insisting on title insurance. And not just ANY title insurance. I want them to have a well searched title policy, because I know how disruptive and unsettling a claim can be. I want my family and friends to pay for a policy

NEVER have to use. I hope the same thing for them regarding their fire insurance. Our industry is constantly being criticized for our low claims payout. I salute every title insurance agent who has made that happen! Our GOOD work keeps our customers... our friends and neighbors... from experiencing claims. We have done our job. WELL DONE!

Benjamin Franklin is often quoted as saying "an ounce of prevention is worth a pound of cure". Those wishing for a change to the metric system might wish to parse words with Franklin, but the fact remains, title agents are the "ounce of prevention" that enables one of our country's greatest privileges... Home Ownership.

Yes, our industry has its critics. Yes, our industry has those whose bad practices should be eliminated. Yes, our industry needs to be proactive in demanding ethical market practices. But our industry should NEVER allow ANYONE to characterize the overwhelming super majority of our work as anything other than the PROTECTION OF THE AMERICAN DREAM.

I know my product. I know its value. I know the importance of the process.

I sell title insurance.

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Michigan's Estate Recovery Law

by *Ryan McNally and Kay E. Kossen, Attorneys with Kreis, Enderle, Callander & Hudgins, P.C.*



I. **Introduction.** Michigan adopted its "Medicaid Estate Recovery" program recently, intended to provide reimbursement of state and federal funds provided to Medicaid recipients. Michigan was the last state to adopt such a program after Congress required all states to do so under the Omnibus Budget Reconciliation Act of 1993. Michigan's program is found at MCL 400.112g and although it is to have immediate effect, it remains subject to various review and approval.

II. **Medicaid and Impact on Medicaid Recipients.** Like welfare, Medicaid is a need based public assistance program. Medicaid is intended to finance health care and long-term care for those persons that cannot pay. In the area of elder law, practitioners assist clients and their spouses in applying for Medicaid assistance to pay for skilled nursing home care. Medicaid is state-administered, but federally overseen and funded through both federal and state funds. Michigan residents have historically had planning opportunities through which assets could at times be transferred or protected entirely as "exempt" for Medicaid qualification. The largest of these assets has been their primary residence. Through estate recovery, the state and federal government are implementing methods through which payback of Medicaid funds will occur, after death, through liens against real estate and/or claims made against the decedent's probate estate. Thus, in many instances the Medicaid recipient's homestead will no longer be fully sheltered.

III. **Assets Subject to Estate Recovery.** Individual assets, meaning generally those subject to probate administration, are those assets considered for estate recovery. This would exclude assets which pass by operation of law due to beneficiary or payable on death designations, those held jointly with rights of survivorship, or assets in a Living Trust. Additional hardship provisions exist as do exclusions for homes occupied by a spouse or by a child who is under 21, blind or disabled.

IV. **Affect on Land Title.** Under Michigan's law, the Department of Community Health is charged with adopting rules regarding how the program will be administered. Assuming a primary recovery method will be liens against real estate filed by governmental agencies, title issues will arise. While payment of liens upon property disposition is the desired result, it will be interesting to see whether efficient methods are provided to clear contested or improper liens, or to process and foreclose a lien. The timing of any such event will be important, and we hope not extensively delayed. Certainly quiet title actions against the Michigan Attorney General are not particularly expeditious or desired. Michigan has chosen to follow federal mandate and to seek repayment in certain instances. The corresponding encumbrance on title will place yet another burden on title companies, real estate counsel, and county registers, all of whom will necessarily play their part in state and federal government collection efforts.

I run a busy title agency.
We needed greater out-of-office flexibility
than our local network could provide.
Then we went with TSS Hosted Solutions.
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MLTA-PAC Silent Auction - Winter Convention 2008

Radisson Hotel, Lansing, MI

Be sure to mark your calendar! The Mid Winter Convention is set for February 27 & 28, 2008 at the Radisson Hotel in downtown Lansing. The registration materials with the complete agenda and speaker line-up are in the mail! You can register online at www.mlta.org. Featured speakers include: Daniel Kildee, Genesee County Treasurer and possible Gubernatorial candidate and Sam Kahan, Senior Economist, Federal Reserve Bank of Chicago. Please start calling your Legislators to invite them to attend the Cocktail Reception beginning at 5:00 p.m on Wednesday, February 27th.

You can call and make your overnight accommodations by calling the Radisson at 517-482-0188.
Use the code MLTC08 to receive the special overnight room rate of \$118.00.

The MLTA-PAC Committee is currently seeking auction items for the very popular PAC Silent Auction that has become a fixture at the MLTA Winter Convention. In the past, we have had a variety of items such as artwork, gift baskets, hunting trips, spa packages and sporting events tickets.

We would like to make this year's auction the most successful to date If you have an item that you can contribute to the MLTA-PAC Silent Auction, please contact:

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734-418-2599 or timmcd@chartermi.net



THANK YOU FOR YOUR CONTINUED SUPPORT OF THE MLTA—PAC!!!

FIFTY states.
THOUSANDS of members.
ONE voice.
A United Title Industry Stands Together.



The title industry has recently been challenged by potentially harmful RESPA reforms, threats from mortgage impairment products, and much more. The American Land Title Association was a major force in securing victories for our industry on these issues.

Now, we need to continue to show the strength of the title industry to members of Congress. You can do your part by joining ALTA today. By combining the power of corporate members representing hundreds of thousands of individuals, we can achieve our goals. Your membership in your state land title association is vital, but our national organization can help all of us speak with a clear and united voice in the halls of government.

One of the immediate benefits you'll gain through ALTA membership is your free copy of the Title Industry Marketing Kit. Your kit will contain a video, brochures, ads, and articles to help you communicate our industry's consistent messages with your local lenders, real estate professionals, builders, and consumers—your tools to share information about the true value of title insurance.

Add your voice to our national efforts through your involvement with ALTA. Contact Alice Baldwin at 1-800-787-2582 or alice.baldwin@alta.org for more information.

TITLE INSURANCE. PROTECTING THE AMERICAN DREAM. ONE HOME AT A TIME.

Stranger Than Fiction

Lisa A. Tyler, SVP, Fidelity National Financial, Inc. National Escrow Administrator

A Northern California escrow branch manager saves the company multi-million dollar loss on a FSBO transaction involving counterfeit checks. Barbara Shelton from Orinda, CA, "inherited" a transaction from an escrow officer who was no longer with the Company.

The transaction was a For Sale by Owner (FSBO) with a \$3.5 million purchase price. Barbara became suspicious about the transaction when she received the loan documents and discovered the loan amount exceeded the sale price by \$1.5 million. The buyer was walking away with loads of cash on a \$3.5 million purchase!

The lender in the transaction was a private party closing under the corporate name of CityFed Capital. The lender hand-delivered the checks to the Orinda office and stayed there the majority of the day. He clearly had boundary issues, because he occupied an empty escrow office as if it were his own. He repeatedly asked the escrow officer not to deposit the loan funds for two days. The escrow officer explained the funds would need to be deposited the same day.

The funding checks delivered to the Orinda office were two cashier's checks drawn from Sonoma National Bank, one in the amount of \$500,000 and the other in the amount of \$1,500,000. Neither check looked legitimate to Barbara.

She contacted the bank to verify the issuance of the checks. A representative of Sonoma National Bank told Barbara the checks she held were counterfeit. As a result, Barbara sent the counterfeit items to the bank, returned the lender's original executed documents and resigned as escrow holder immediately. Thanks to Barbara for recognizing counterfeit checks and for saving the Company from a multi-million dollar loss!

BOARD BIZ

by Douglas McFarlane, Secretary/Treasurer MLTA

● Arrangements for the Winter Convention are coming together nicely. The dates are Wednesday and Thursday, February 27-28 in Lansing so mark your calendars. Notices are in the mail as this goes to print.

● Shortly after the first of the year the MLTA will be providing its members the opportunity to participate in a large group insurance plan that will include life, health and other insurances. This will give our members the opportunity to take advantage of participating in a larger group resulting in lower premiums. The board has been working on this project for most of the year and is pleased that it will soon be available.

● **MLTA New Website** has gone “live” with its new website designed to be more graphic appealing and to give the membership and public more information on the title industry. The member’s portion will allow you to manage your company and MLTA membership information directly. It will also feature multiple ways to find an MLTA member by name, county, company or personal name.

Please see this exciting new website that represents the Michigan title industry www.MiLTA.org. New to this website will be:

- Online Registration for all MLTA events
- An easy to use member directory search tool
- MLTA publications
- MLTA Member Contact Listing Update



In an effort to promote you as a member of the MLTA, the website will now allow you to make any changes and updates to YOUR directory listing. This launching of the new website requires the principle contacts for the MLTA member company to review the company and individuals listed on this new MLTA website. If you wish to add additional contacts, please contact the MLTA office at 517-374-2728.

Thank you and happy holidays, The Michigan Land Title Association

ON THE MOVE...

Michael J. Hagerty has joined Plunkett Cooney

in Bloomfield Hills as Senior Attorney in the firm's Title Insurance Practice Group. He will focus primarily in the areas of title insurance and real estate law. Email: mhagerty@plunkettcooney.com

Professional Abstract & Title a Lighthouse Title Group Member, has moved. Connie Curio and her team are now located at:

973 S. Centerville Road,
Sturgis, MI 49091
Phone: 269-651-9532
Fax: 269-651-1260

Timothy J. McDonnell has joined Old Republic Title as Michigan Agency Representative.

His responsibilities include working with existing agents and assisting them in their continued success, as well as identifying and recruiting new agents.

Phone: 734-418-2599
Fax: 734-786-8413

SoftPro has been named finalist in the Top Customer Service Company of the Year category for the 2007 NCTA 21 Awards.

SoftPro, part of the Fidelity National Information Services, Inc. family of companies, is the leading provider of Closing and Title Software solution, has over 12,000 customer sites and 50,000 users nationwide.

If your firm would like to share information in this section email jsmalldon@lighthousegroup.net.

News Flash from the Public Relations Committee:

We want to promote YOU. This year the MLTA would like to acknowledge all the wonderful things our members have done for their communities. If you have recently done something extraordinary in your community we want to know about it.

Provide Derek Dalling (Derek@KindsvatterAssociates.com) a summary of what you have done and any pictures to go along with the information. Let Derek know the name of your local newspaper. Then Derek will coordinate getting the information submitted to your local newspaper as well as put into the Title Examiner. We want to celebrate the title industries contribution to our great state. What better way then to spotlight our members. If you have any questions please contract Marcy Welburn at 517-318-4390. 

NEW COMMITTEE: Professional Designation Ad Hoc Committee

Sarah Maddox Sutton, State Agency Manager - Fidelity National Title

The new Professional Designation Ad Hoc Committee was “born” out of another MLTA project concerning education. The idea behind this new committee is to create *formal designations* that would be awarded when a member of MLTA met the requirements under the designation programs. These designation programs will recognize superior achievements of practitioners within our industry, along with elevating the role of MLTA in developing expertise and standards of practice in title.

The new Professional Designation Ad Hoc Committee is charged with creating a plan to implement the Professional Designation Programs by evaluating all the materials we already have developed and create a plan to roll out the program to our members. Sarah Sutton, Fidelity National Title, has agreed to chair this new committee and Cathy LaMont, LaMont Title Corporation, will be the Board Liaison committee member.

We currently envision two professional designations. The Certified Land Title Professional (CLTP) and the Associate Land Title Professional (ALTP) designations, for those persons within the Michigan Land Title Association who, through combinations of education, experience and performance, have demonstrated a proficient knowledge of land title insurance.

The Michigan Land Title Association, through its educational programs and its active committees, will provide an ongoing program of continuing education and service opportunities for members of the land title insurance industry and for persons with a professional interest in land title services and insurance.

The designations represent the highest measure of achievement in the land title insurance profession and follow the Professional Designation concept found in other lines of insurance. The committee looks forward to presenting this exciting program to the members sometime in 2008. 

Win the Race or Lose the Lawsuit

Gregg Nathanson, Attorney, Couzens, Lansky, Fealk, Ellis, Roeder & Lazar, P.C.



The Michigan Court of Appeals recently ruled on the priority of competing mortgages under Michigan’s “race-notice” statute. The Court found that the winner of the race, won the lawsuit. *Washington Mutual Bank v. Community Shores Bank* (October 25, 2007).

Here are the facts:

1. Bank A makes mortgage loan to Borrowers and records Bank A mortgage.
2. Bank B makes unsecured loan to Borrowers (no mortgage).
3. Bank C makes mortgage loan to Borrowers. The loan proceeds are used to pay off Bank A but, Bank C (its title company!) neglected to promptly record Bank C mortgage.
4. Bank B converts its unsecured loan to a secured mortgage loan. Bank B promptly records its mortgage, before the Bank C mortgage.
5. Borrowers default (surprise) and Bank B forecloses its mortgage.
6. Bank B claims its mortgage has priority over Bank C’s mortgage because it was recorded first. Bank C claims its mortgage has priority since its mortgage loan closed first, its mortgage was executed first, and its loan proceeds were used to pay off the Bank A mortgage, which was recorded before Bank B mortgage.

Who wins?

Bank B. Why? Michigan is a race-notice state. Bank B won the “race” by recording their mortgage first, thus giving “notice” to all subsequent lien holders. The un-recorded (Bank C) mortgage “shall be void” against the subsequent Bank B mortgage, as long as Bank B records their mortgage first and “in good faith.” Good faith means the lender (Bank B) made their loan “without knowledge” of the prior un-recorded (Bank C) mortgage.

Bank B obtained a title commitment before making its loan. The commitment disclosed the Bank A Mortgage but it did not disclose that Bank A had been paid off with loan proceeds from Bank C. The Court held that, even though Bank B had notice of a prior recorded mortgage, Bank B did not know about Bank C’s prior unrecorded mortgage.

The Court also rejected Bank C’s argument that its mortgage is entitled to priority based on equitable subrogation. Equitable subrogation means it is equitable (fair) for Bank C to enjoy the same priority as Bank A, since Bank C’s loan proceeds were used to pay off Bank A. Interestingly, if Bank C had *purchased* the Bank A promissory note and mortgage from Bank A, instead of making a mortgage loan to Borrowers who used the money to pay off Bank A, then Bank C *would* have taken over the priority position of the Bank A mortgage.

In summary, if a mortgage loan made second wins the “race” by recording its mortgage first, and that lender does not have “notice” of a prior unrecorded mortgage, then the mortgage recorded first has priority. 

Moral of the story: promptly record those mortgages!

Legislative Committee Update

Tim Ward, J.D., Michigan Legislative Consultants

CANDIDATE WATCH 2008

With 2008 now here, a new feature is being added to this column by profiling candidates for the Michigan State House of Representatives. This will give MLTA members a glimpse at candidates who may be voting on legislation beginning in 2009.



The 36th district is currently represented by Brian Palmer. The district is considered a Republican seat. Seeking to replace Palmer is Peter Lund of Shelby Township. Commissioner Lund was re-elected in November 2006 to a fourth two-year term representing the 12th District on the Macomb County Board of Commissioners. Before his first election to this seat in 2000, Lund was appointed to serve the remainder of the previous commissioner's unexpired term.

Lund also served as a commissioner in 1995-96 when he lived in Harrison Township. He was the first chairman of the Macomb Orchard Trail Commission and oversaw the trail's grand opening on July 23, 2004.

Lund owns and operates Direct Mailers in Troy, MI. He has a Bachelor's degree in Economics and Political Science from Adrian College and an MBA in Finance from Wayne State University. Lund and his wife, Dr. Karen Potchynok-Lund, live in Shelby Township. They have two children. ☺

CAPITOL CALENDAR

In 2007, the State Capitol certainly saw its share of challenges. The list includes replacement of the Single Business Tax, the income tax increase, the passage of a use tax on services to the repeal of same (see article below).

With the Legislature on break until mid-January, activity for MLTA includes meetings with legislators to lay the ground work for issues that may see activity in 2008. So far this session, the MLTA's Legislative Committee has reviewed hundreds of bills and the Legislative Steering Committee considered over 40 bills and has been actively involved in over 20 pieces of legislation.

The New Year will begin with the Governor's State of the State, typically in late January. As of this writing, the date has not been set. This will be followed up sometime in February with her presentation of the State Budget. These two events will set the overall framework for much activity in Lansing for 2008. ☺

SERVICE TAX REPLACED WITH MBT SURCHARGE

Over the weekend of December 1st, the \$1.7 billion dollar Sales Tax on Services was repealed and replaced 15 hours after it went into effect. However, in order to keep the budget balanced, the legislature had to come up with a replacement. The legislature decided not to cut into government, but instead developed a proposal that would raise the \$1.7 billion.

This past summer, the Legislature created a new Michigan Business Tax which replaced the Single Business Tax that expires at the end of this year. This new MBT was touted as a tax that saved in-state manufacturers from paying burdensome taxes that was causing them to leave the state.

The new proposal to raise \$1.7 billion, places a 21.99% surcharge on businesses that pay the MBT – a tax on top of a tax. Businesses "surcharge" liability would be capped at \$6 million and the tax will be reviewed in 10 years and if it is determined that the economy is doing well (under a formula), the surcharge would be repealed.

Though the service tax was repealed and the budget is now in tact, the process has been a costly nightmare for businesses already. Some spent money to upgrade their accounting software to be in compliance to collect the tax. Others were confident that the tax would be repealed and didn't collect a penny.

The repeal of the use tax on services should be considered a positive step for services that were not included in the original version. With the tax gone, it will be politically more difficult to tax other services in the future. That said, the Legislature and Governor did it once, so never say never again. ☺

ENTRY BOOK LEGISLATION

This year the MLTA, Real Property Law Section and the Michigan Association of Register of Deeds (MARD) have been negotiating entry book reform. This discussion was in generated in response to MARD's interest in repealing the entry book statute.

Two bills were recently introduced: SB 927 and HB 5512. MLTA is opposing both bills in their current form and continue to work with MARD and the RPL to find the right solution. ☺



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Long- And Short-term Mortgage Rates Reverse Trend And Rise This Week - Housing Industry Still Struggling

December 17, 2007

McLean, VA – Results of the Freddie Mac Primary Mortgage Market Survey® (PMMSSM) found that the 30-year fixed-rate mortgage (FRM) averaged 6.11 percent with an average 0.5 point for the week ending December 13, 2007, up from last week when it averaged 5.96 percent as well. Last year at this time, the 30-year FRM averaged 6.12 percent. The 15-year FRM this week averaged 5.78 percent with an average 0.5 point, up from last week when it averaged 5.65 percent. A year ago at this time, the 15-year FRM averaged 5.86 percent. Five-year Treasury-indexed hybrid adjustable-rate mortgages (ARMs) averaged 5.89 percent this week, with an average 0.6 point, up from last week when it averaged 5.75 percent. A year ago, the 5-year ARM averaged 5.92 percent. One-year Treasury-indexed ARMs averaged 5.50 percent this week with an average 0.6 point, up from last week when it was 5.46 percent.

At this time last year, the 1-year ARM averaged 5.45 percent. “November’s employment report showed stronger job growth, no change in the unemployment rate and a jump in wages, suggesting to some market participants that the probability of an upcoming recession might be lower than originally thought,” said Frank Nothaft, Freddie Mac vice president and chief economist. “This led to a rise in interest rates for U.S. Treasury securities this week and mortgage rates followed.” However, against that backdrop, serious delinquencies (90 days or more delinquent or in foreclosure) on prime conventional mortgages rose to 1.31 percent in the third quarter of 2007 from 0.79 percent in the same quarter in 2006. And serious delinquencies for subprime loans rose to 11.38 percent from 6.78 percent over the same period, so the housing segment of the economy still has a way to go before bottoming out.” 

The National Mortgage Rate Snapshot											
This Week				One Week Ago				One Year Ago			
30-Yr	15-Yr	5-Yr ARM	1-Yr ARM	30-Yr	15-Yr	5-Yr ARM	1-Yr ARM	30-Yr	15-Yr	5-Yr ARM	1-Yr ARM
6.10	5.73	5.08	5.43	6.10	5.73	5.08	5.43	6.24	5.94	6.04	5.53
0.4	0.4	0.4	0.5	0.4	0.4	0.4	0.5	0.5	0.5	0.5	0.5

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Knowledge is Power!

Lisa A. Tyler, SVP, Fidelity National Financial Inc. National Escrow Administrator

Don't Use the "F" Word

No, not that one, I mean **FRAUD!** Our business is getting tougher. Deals have become more and more complex. Sometimes it can be hard to tell which transactions are good and which are bad. Regardless, it is never appropriate to accuse someone of fraud.

Detecting a fraud or a forgery in a real estate transaction is exhilarating and disappointing all at the same time. Typically, the settlement agent is well into the transaction, having spent lots of time and effort, only to discover the transaction will ultimately not close.

In most cases we will resign as settlement agent with the escrow officer receiving nothing for the work performed.

Detecting the fraud or forgery is step one.



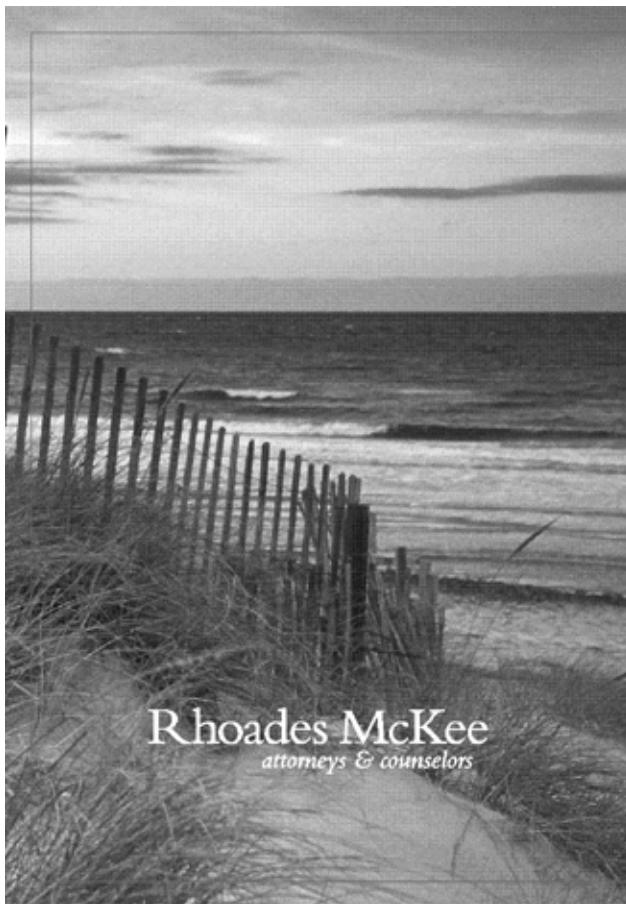
What we do next is even more important. We must be careful not to share our personal opinion, gossip or hearsay. Rather, stick to the facts and nothing but the facts. A win-win situation occurs when those who have the most to lose are given all the facts and make their own decision on how to proceed with the transaction, if at all.

The second step after detecting a fraud or forgery is to get your manager involved. Together you can analyze the situation, assess the risk and decide who else should be notified. It is easier to identify the true risks if you have an unbiased person to review your findings.

The third step is to notify the real estate

professionals in the transaction, unless they are the individuals perpetrating the crime. In all cases the settlement agent needs to call (not e-mail) the funding lender to relay their findings and fax any documents the lender might not have. Examples of those types of documents would include a third party deposit, evidence of more than one owner-occupied property, discrepancies with identification presented at the closing table or discrepancies between signatures on documents purportedly signed by the same party.

If the lender decides to pull the loan, we do not look like the whistleblower and if the lender decides to re-submit the loan with new facts, we have an opportunity to close the deal. All of this is accomplished without using the "F" word. The truth is very powerful and can stand on its own.



Rhoades McKee
attorneys & counselors

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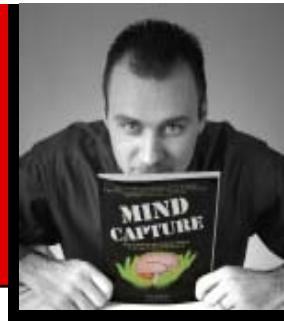
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MIND CAPTURE MARKETING:

New Year Motivation

by Tony Rubleski - President, Mind Capture Group



2007 was a whirl wind year as I found myself on the road sharing 'Mind Capture' marketing, sales and promotion ideas with audiences and clients in cities such as San Francisco, Seattle, Portland to Las Vegas, Denver, Omaha and New York City to name a few. I even had the great pleasure to work with MLTA by speaking at your summer conference at Boyne Mountain. I'm grateful for the chance to have served so many people and make it home from each journey safely and into the arms of a wonderful wife and three amazing children. God has truly blessed us.

With 2008 upon us I wanted to share with you a special message that I hope you find of value as you head into the New Year. Originally written over three years ago, I still get requests from clients, magazines, and organizations to share and reprint this article. Enjoy!

YOUR Extreme Makeover

What if you had only one day to live? What would you do? Who would you call? What would you say to those you love and trust the most? This is quite a heavy way to start a newsletter column, but I encourage you to stay with me and read on.

I'm often baffled by how unhappy most people seem these days. I use "seem" because far too many people let others dictate their attitude and outlook on life. When you wake up each day, ask yourself this simple yet profound question: what am I thankful for? By asking this, you'll quickly develop a habit of building positive energy and productive thoughts.

I'm not Dr. Phil or Oprah by any means, and I'm thankful to be who I am. While these two are wildly successful and living life fully engaged at full throttle, I can't imagine how plain and routine the world would be if we were all exactly like them. Each of us at birth is a one of a kind masterpiece created by God with unique talents and abilities waiting to be unleashed during our stay on Earth if we focus on our strengths and not our weaknesses.

In the business world, where I spend most of my waking hours, I often find the most successful people have three main characteristics in common from which we can all learn and apply to our lives.

1. They are problem solvers, not complainers.

For every problem they solve, they are keenly aware that new ones can quickly sprout up like weeds. These successful people look at problems as temporary roadblocks that are a natural part of life. The key difference with them is that they ask positive questions to solve the issue at hand. Unfortunately, most people would rather give up, complain or simply turn around and ignore the problem. Winners know that this is not productive or a solution based strategy to employ. Their "can-do" attitude is often criticized by those who are mentally lazy and live their life by a code of never ending excuses as to why something can't be done versus seeing the possibilities.

2. They strive to learn and improve themselves each day.

School is never out for the pro. Each day is a new world of people, experiences and knowledge from which to learn and gain perspectives. In life, not everything stays the same; change is often the only constant. Stability is a good thing, yet to ignore the changes around us and new information is to live in a perpetual state of denial.

3. They realize the present moment is valuable and not to be wasted.

Yesterday is in the past, and tomorrow is only a dream. Time is finite and cannot be replaced. Each day they strive to get better, serve others and live life to its fullest. Many people are still stuck in the past reliving memories instead of focusing on creating new one's each day.

These three characteristics share an important commonality: the ability to take life one day at a time and treasure the importance of each new sunrise. Planning ahead is necessary, but taking action each day is central to making gradual and long-term positive change a reality.

In closing, I'd like to issue a challenge; imagine that each day could be your last. Again, arise each day by giving thanks and counting your blessings, not your problems like so many others painfully keep doing. Build momentum to help yourself and those around you. The world has a never-ending need for your skills, talents and leadership abilities. It would be a tragedy to live most of your life regretting the past or endlessly thinking about your future. Spend more of your precious time on today.

Welcome to West Michigan, Region Draws Millions of Dollars of Out-of-State Investment this Year

by B. Candace Beeke, Associate Editor - Business Review Newspaper

What had been a trickle of out-of-state investments into western Michigan has become a flood, brokers say. Interest in western Michigan by out-of-state investors has been climbing for a couple years. They like our cap rates, they like our stable and steady appreciation, and they like our low building costs compared to the top-tier markets they're leaving. They also like western Michigan. And that's why what was a steady trend 12 to 18 months ago has turned into record amounts of investments and busloads of out-of-staters touring the region for opportunities, said brokers Colin Kraay and Chad Barton of Grubb & Ellis | Paramount Commerce in Grand Rapids. "It's been a steady trickle for a number of years in a row," Kraay said. "We've closed in the last three months just shy of \$50 million in property. We have another 450 million in contract. That's a lot of real estate in west Michigan." The first few months of the year brought \$20 million in deals, he added.

"One hundred percent of the deals we were involved in were out-of-state buyers" for the past year and a half, Kraay said. "Local sellers are still trying to capitalize on what they consider a high-demand market because so many guys have been long-term cash-flow owners," he added, noting high appreciation in the last few years. "They're saying, 'I'll cash out now.'" And these aren't small-time investments — national players are looking for product of \$5 million or more, Barton said. "The floodgates have opened. We've probably done 20 tours of out-of-state buyers or banks or appraisers in the last six months," Barton said. "They are impressed," Kraay added. "It's so easy to sell this city right now."

The new JW Marriott hotel, an expanded Grand Valley State University and the burgeoning Medical Mile along Michigan Street — some of the major projects that have contributed to some 2 billion in new construction in Grand Rapids — are allies in wooing and winning out-of-towners, he said. "That's impressive to somebody who thinks about Michigan as the rust belt or Detroit," Kraay said. But before the region can win over investors, it first must lure them. And high-capitalization rates, defining the rate of return on investments, have done that lately. "Our cap rates are much higher, but you're not going to see the ups and downs you would on the Coast," Barton said. "We're slow, we're steady," Kraay added. "It's just a predicted cash flow. What would surprise people is they're buying industrial — 65 to 70 percent of the deals." There is an inside-out, reverse-trend parallel to this outside-in investment, however, noted Bill Anderson, regional director for Atwell-Hicks, based in Ann Arbor with an office in Grand Rapids. "As the housing market has slowed ... I've got some very well-capitalized regional developers and builders, a lot of them residential, looking into other areas" of the country, Anderson said. "A lot of them are retail, as well." The development-consultant and architecture-engineering firm has assisted several developers in expanding outside Michigan, a trend he expects to continue past any upturn Michigan might experience.

Kraay and Barton also anticipate the investment trend into the state to continue, despite tightening of lending nationwide. They've already seen buyers return in the same year to make more purchases. "Their perception is we're in the doldrums," Barton said. "Once we get them to town" "It sells itself," Kraay said.

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From the Oakland County Business Review: U.S. Gets New Standards for Green Home Building Run with: Screen Grab

by Greg Migliore, Business Review Newspaper

The National Association of Home Builders is launching an on-line "green" building certification and education program in February that outlines new standards for sustainable residential construction. The NAHB has been contemplating a national program since 1998, and decided to move forward this year as interest in green building grows across the U.S. A recent survey found 97 percent of builders said energy efficiency was somewhat or extremely important to buyers. Indoor air quality was the second-most important green building characteristic, mentioned by 83 percent of builders. "Over the last 10 years, there really has been a lot of movement in the green building industry," said Lauren Forgacs, green building program manager for the NAHB. The new program is expected to include tools to certify projects, building resources and a comprehensive registry of green-built homes. Officials plan to unveil it at the International Builders Show in Orlando.

It's primarily an on-line resource, and local associations will still need to certify the projects on site. The program is based on the NAHB's green building guidelines, which were set up in 2005. It's designed to give builders a sense of where they stand, before the physical inspection. The new program would compete with the U.S. Green Building Council's nationally recognized Leadership in Energy and Environmental Design (LEED) standards.

Though LEED is well-established, the NAHB says there's another niche for guidelines and is marketing its set to the "mainstream" builder. Its research indicates more than 100,000 homes have been built in the last decade and certified through voluntary, builder-supported green programs. NAHB studies also found 90 percent of builders it surveyed would be interested in participating in its program. Mindful of this, the association is trying to bring some consistency to builders who practice environmentally friendly techniques, but don't go through LEED certification. "There's a number of builders that have been doing different things in each of our individual projects," said Brian Catalde, NAHB president. Maureen Sloan, chief executive officer of the Home Builders Association of Washtenaw County, said the uniform guidelines will help local builders get recognition. "It's nice to know that we have this national standard," she said.



The NAHB has assigned about 40 of its 400 employees to help the program launch. Local associations and builders have been testing the pilot program since October. Builders will be able to use the Web-based tools to check off requirements and estimate how close they are to environmental certifications. It's free to score a house, but local certification usually carries a fee, said Calli Schmidt, spokeswoman for the NAHB.

The program will also emphasize education, Catalde said. He estimated builders can save consumers an average of at least 20 percent on utility costs by following some of the practices.

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The Three Ways to Winterize Your Business

Just about this time every year, our clients begin to feel a heightened level of awareness around the winter months. While everyone else on the planet starts to think about presents, family get-togethers and yuletide cheer, the title business starts the process of hunkering down for what typically proves to be a much slower time of year. As an added bonus, this year also brings the additional impact of a significant market downturn which makes the seasonal winter lull look particularly disconcerting. A lot of sleep has been lost over the marriage of these two issues in the pending 2007/2008 Winter months.

In the past, we've talked about right-sizing both your business and your expense levels to the current state of the market. Surely it is something you've already taken painful strides to do. If you haven't, please do not wait a moment longer. Although I don't intend to waste your time rehashing the 'ins and outs' of staff reductions, (absolutely critical to become properly-sized for the existing market, simply refer back to your 1999 numbers), I will simply restate that literally nothing will bring the business volume back to the tolerance of our staff level in 2005 or 2006. Complete your staff reductions and read on.

To avoid winter hibernation in your business, you will need to focus on a few basic activities. So, now that you've sized your company correctly, the following three ideas will be critical for you to succeed in the coming six months. While these ideas may seem simple to apply, meaning they don't require sophisticated systems or processes, and may even be somewhat obvious, they become critical leadership methods for managing through this seasonal cycle. Take heed and start working on their execution immediately. Don't waste a moment of time, only to find yourself on the wrong side of the profit and loss statement come springtime.

ONE

Ask your support staff if they would like seasonal hours, e.g. days off without pay. In a nutshell, although your staff expense reductions should be enough to keep you in line with the marketplace, getting a short term lift by offering days without pay (DOWP) can help you to weather the seasonal slowdown without losing important infrastructure needed for the spring. Keep in mind this is absolutely *not* a replacement for staff reductions. Simply a reminder to make sure that your staffing level is in line with numbers seen in November and December of 1999. These DOWP will provide a small, short term reduction in payroll expenses while giving support staff an opportunity to take a much needed break during the holidays.

One more important point.

Although you can offer this option to your entire staff, (except in rare circumstances), you are better off encouraging revenue producers (salespeople and closers/escrow officers) to keep their activity level high during this time rather than considering their option to take days without pay. I'll explain more in a moment, but remember that it is truly critical to keep business development activity-focused, consistent and highly accountable during the holidays – especially since your competitors may be trying to play catch up with their own expenses and will be unlikely to spend spare time selling.

TWO

Have every revenue generator, salesperson, escrow closer and executive put together a holiday target list comprised of the following people:

- a. Anyone who has given you an order in the past six months.
- b. Anyone who had been on the non-directing side of a resale transaction over the past six months.
- c. Any real estate agent or lender who *used to* give you business but has drifted away recently.
- d. Any real estate agent or lender who has committed a deal verbally to your company or promised "the next deal," but hasn't come through yet.
- e. Any real estate agent specializing in pre-foreclosure sales in your marketplace.



Once this list is complete, put the list in an excel spreadsheet or use our FirePower sales management software, to enter all of the names in a place where you can track both activity and results. Distribute this list to all participating revenue producers once per week between now and the end of January. Ask each person to update their progress on a weekly basis. Have each person call their targets use the script that follows. Encourage people to use their own words, but be careful on the third portion (Part 3 below), they should use the script verbatim.

Winter Script:

1. "Hi <agent/lender>. This is <your name> with <company>. How are you? Great. Hope you're getting ready for a nice holiday.

2. The reason I'm calling is that I'm hoping to end my year on a high note. In fact, I have a goal to open more orders the last quarter of the year than I did during the third quarter. I've really enjoyed working with you this year <or, I've had you on my wish list of people I'd like to work with all year> and I thought I start with the clients I most enjoy.

3. [THIS IS THE IMPORTANT PART.] I was wondering.... Do you have anything you are working on that I can open for you right now?"

Your staff may initially feel uncomfortable with Part Three. Have them role play and assure them they'll gain confidence after they do it a couple of times. Practice makes perfect and the more often it is repeated, the easier it is to say aloud. Remember that this third portion is critical - Don't let people wimp out! After ten years of working with over 250 title companies, I can tell you that if you don't hear them ask this very question while they're on the phone, they aren't specifically asking for an order. They will not be selling. Using the Winter Script will absolutely and positively result in immediate orders for your business. Remember to follow up – ask everyone to track their activity (phone calls asking for orders) and results every week.

THREE

Don't let yourself, your salespeople, or your closers/escrow officers get away with the foolish notion that since "no one works during the holidays," they can take their foot off the business development pedal. While there is no doubt that overall volume slows during this time, there are always deals opening and closing and always money to be made. When I was in title sales, I found the holidays to be some of the most successful prospecting time I ever had throughout the year. People tended to be more relaxed and are usually more open to engage in conversation. Additionally, literally none of your competitors will be as hungry as usual, as they'll assume that all real estate professionals spend the holidays on another planet instead of working. Please believe me when I tell you that this is just plain rubbish. Don't let up on the gas. The fourth quarter just might end up to be a great one if you keep everyone focused on activity and results.

Winter in the title business can be challenging, and the slowing market this year over last makes it harder than usual. Follow the three simple steps outlined above, keep me posted on your progress, and your season will be very merry indeed.

by Dan Miller,
CEO,
RightNow Consulting

When is a Future Advance Mortgage Paid Under Michigan Law?

by Adam B. Kutinsky, Attorney, Kitch Drutchas Wagner Valitutti & Sherbrook

The field of title litigation has seen its share of appellate activity over the past few years. As most in the title industry now know, the doctrine of equitable subrogation was aggressively litigated between 2005 and 2007, culminating in the appointment a Court of Appeals conflict panel that rendered a final decision in *Ameriquest Mortgage Co v Alton*, 273 Mich App 84 (2006). In *Ameriquest*, the Court of Appeals denied the use of equitable subrogation by “sophisticated financial institutions” because they were “mere volunteers” to financing transactions. Currently, the *Ameriquest* decision is on application for leave to appeal with the Michigan Supreme Court, and the Michigan Land Title Association is paying close attention to its review.

Of the numerous Michigan appellate cases discussing the equitable subrogation doctrine, one decision in particular also addressed a separate legal issue that is also significant to the title industry, but has received less attention. That is, when must a lender discharge a future advance mortgage following a pay off at closing? This particular question was addressed by the Michigan Court of Appeals, along with the equitable subrogation issue, in *Deutsche Bank Trust Company Americas v Spot Realty, Inc*, 269 Mich App 607 (2005). The *Spot Realty* case reminds us of how important it is to obtain account close out letters from borrowers to ensure that future advance mortgages get discharged at closing.

In *Spot Realty*, two homeowners borrowed \$284,000 from an investment company, secured by a senior mortgage on their home (Mortgage A). Subsequently, the homeowners opened a revolving line of credit with a third party lender in the amount of \$40,000, which permitted the homeowners to draw amounts up to the credit limit throughout the term of the loan. This revolving line of credit was secured by a future advance mortgage on their home (Mortgage B), which was a second lien behind Mortgage A.

A few years later, the homeowners refinanced their home with another lender (Mortgage C). The proceeds secured by Mortgage C were intended to pay off and discharge both Mortgage A and Mortgage B, thereby making Mortgage C the first and only mortgage on the property. Mortgage A was paid and discharged as planned, however, while Mortgage B was paid, the Mortgage B lender did not close out the homeowner's underlying line of credit nor discharge the future advance mortgage (Mortgage B). Subsequently, the homeowners re-drew on the line of credit which was still secured by the future advance mortgage (Mortgage B). As a result, Mortgage B remained a lien on the property in a first-lien position ahead of Mortgage C.

Subsequently, the homeowners defaulted on Mortgage B, which foreclosed on the home by advertisement. Since Mortgage B was never

discharged, it was entitled to take ownership of the property by sheriff's sale, wiping out the later recorded Mortgage C. When considering these facts, the question arises, why would the Mortgage C lender pay off Mortgage B without first ensuring that it obtained a discharge? The answer is simple - it was relying on Michigan law.

MCL 565.41(a) provides that “after a mortgage has been paid or otherwise satisfied,” the mortgagee or assignee shall prepare and record a discharge of the mortgage with the register of deeds. Naturally, when the Mortgage C lender extended financing and paid off Mortgage B in full, it felt that it satisfied the requirement of MCL 565.41(a) and was therefore entitled to a discharge of Mortgage B under Michigan law. However, despite receipt of payment in full, the Mortgage B lender did not “prepare and record a discharge” in accordance with MCL 565.41(a). The reason for this was based upon the following provision found within Mortgage B:

You may cancel your Line at any time by giving (us) written notice of cancellation. . . . This agreement will remain in full force and effect if the Line is cancelled, except (we) will have no obligation to extend credit, and you agree to pay (us) the Obligations when due. . . .

Relying upon this provision, although it received payment of its Mortgage in full, the Mortgage B lender refused to discharge its future advance mortgage because the homeowners never submitted a written notice of cancellation and therefore, the underlying revolving line of credit was never closed. Since the underlying line of credit was never closed, the Mortgage B lender reasoned, Mortgage B (a future advance mortgage) was not required to be discharged. Most likely, the Mortgage B lender was reluctant to close out the line of credit without borrower's authorization because it was attempting to comply with Federal law - which precluded it from unilaterally terminating a credit line except under certain circumstances. 15 USC 1647(b).

However, although it may have put the lender in a precarious position, the inability to close out the homeowner's line of credit should not have affected the operation of MCL 565.41(a), which clearly required a discharge of Mortgage B upon payment. Moreover, the Court of Appeals acknowledges that MCL 565.41(a) applies equally to future advance mortgages, which have the potential for borrowers to re-draw on the line of credit after payment in full. See, *Spot Realty*, at 614.

Since the Mortgage C lender believed that Mortgage B's disregard of MCL 565.41(a) was in error, it filed suit to quiet title to the property following foreclosure. In addition to relying upon MCL 565.41(a), the Mortgage C lender also asserted equitable subrogation, seeking to stand

in the shoes of Mortgage A, which was paid off by its funds. The trial Court found in favor of Mortgage B, in part based upon its conclusion that MCL 565.41(a) did not apply to future advance mortgages. The case was appealed to the Michigan Court of Appeals at which time the *Spot Realty* Court found in favor of the Mortgage B lender, but based upon different reasoning. In particular, the *Spot Realty* Court determined that MCL 565.41(a) does apply to future advance mortgages, but that the law requires something more than simply paying the mortgage off.

It may be somewhat surprising that, in rendering its decision on the interpretation of MCL 565.41(a), the *Spot Realty* Court did not apply a rudimentary rule of statutory construction - that unambiguous statutes are enforced as written. After all, MCL 565.41(a) is clear that once paid, a mortgage must be discharged. Rather, the *Spot Realty* Court surprisingly read an additional requirement into this otherwise unambiguous statute:

The statute provided that “[a] mortgagee . . . within 90 days after a mortgage has been paid or otherwise satisfied and discharged, shall prepare and file a discharge thereof. . . .” A future advance mortgage is not “paid or otherwise satisfied” unless the debt is paid off and future advances are terminated.

The *Spot Realty* Court does not further explain why it decided to read an additional requirement of terminating the future advance line of credit into MCL 565.41(a). Perhaps it sought to avoid the unintentional result of creating a windfall for borrowers that, based upon MCL 565.41(a), could pay down a line of credit without closing it out, yet obtain a discharge of the bank's mortgage - thereby creating an unsecured line of credit. Ultimately, in reading an additional requirement into the statute of closing out the underlying line of credit, the Court of Appeals put the burden on title agents to obtain a written close out letter from borrowers at the time of closing to ensure that future advance mortgages are discharged. Although the issue of equitable subrogation is on application for leave to appeal with the Michigan Supreme Court, the Court of Appeal's interpretation of MCL 565.41(a) remains unchallenged. As a result, title agents throughout Michigan must be diligent in requiring borrowers to sign close out letters and submitting the letters to lenders at or subsequent to closing. Otherwise, they may face the unintended consequence of leaving an otherwise paid off future advance mortgage un-discharged with an open line of credit secured by the property without any recourse under Michigan law. 

Reducing the Risk of E-Recording in Michigan

By Patricia Irving Cwick, MLTA General Counsel and Director of Public Policy

Despite the fact that registers of deeds in several Michigan counties currently permit “electronic recording”, Michigan has not yet enacted the Uniform Real Property Real Estate Recording Act (URPRERA), or any other legislation which specifically permits the recording of digitally imaged instruments or other electronically transacted conveyances of real property. Instead, these registers rely upon the general provisions of the Michigan Uniform Electronic Transfers Act (MUETA)¹ for authority to record paper instruments presented by electronic means. The Michigan Attorney General recently opined that “a county register of deeds may accept and record documents in an electronic format and bearing electronic signatures, consistent with the MUETA … so long as each party has agreed to conduct the transaction by electronic means”.²

Unfortunately, Michigan registers have not entered into agreements with the appropriate parties, and are not conforming to the requirements of MUETA to assure that instruments presented electronically conform to the requirements imposed by Michigan’s recording statutes. The absence of proper agreements may put the validity of e-recorded instruments into question. Fortunately, those registers of deeds who want to offer e-recording services may correct this situation by executing agreements with title companies and other organizations to certify the authenticity of original signatures on the instruments which they submit electronically.

MUETA and Michigan’s Recording Acts

Although the provisions of MUETA are very broad, Sections 5 and 6 of the act³ MCL 450.835 and 450.836 explain its scope and indicate that the act must be construed consistently with other applicable law. Specifically, these sections of MUETA provide:

- 1) The act applies only to a transaction between parties who have agreed to conduct the transaction by electronic means; and
- 2) The legal consequences is of an electronic record or electronic signature is determined by this act *and other applicable law*; and
- 3) The act shall be construed and applied to electronic transactions *consistent with other applicable law*. MCL 450.835 and 450.836 [Emphasis supplied].

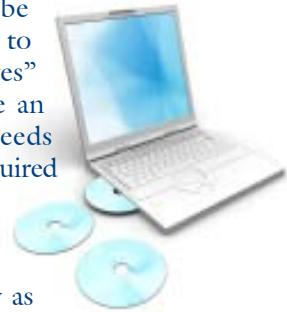
The recent opinion of the Michigan Attorney General emphasizes that electronic recording transactions authorized by MUETA are also subject to Michigan’s recording statutes, the substantive law applicable to all recording transactions. Op. Mich. Attorney, 2007, No. 7207, pp 4-7, 12. Since the “transaction” involved in e-recording is the act of recording instruments with the register of deeds, the parties involved are identified by Michigan’s recording laws as those persons who record and execute instruments submitted for recording.

Michigan’s recording laws require that every instrument entitled to be “recorded at length” by a county register of deeds must conform to the requirements set forth in MCL 565.201. The provisions of MCL 565.201 (a) and (c) expressly provide that no register of deeds shall accept, for “recording at length”, any instrument unless it bears the original signature or mark of the

person purporting to execute the instrument, as well as the original signature of the notary or person acknowledging the signatures of the parties to the transaction.

Thus, the “agreement” which must be executed pursuant to MUETA relative to the acceptance of “electronic signatures” for purposes of “e-recording”, must be an agreement between the register of deeds and all parties and persons who are required to provide original signatures on instruments submitted for recording.

This usually involves the signatures of the parties conveying an interest in property as well as the notary acknowledging the signatures of such persons.



Unfortunately, most agreements executed by registers relative to e-recording are not agreement between the register and those persons required to execute and provide original signatures on instruments submitted for recording. Nor are they agreements between the registers and the title companies that usually submit instruments for recording. Instead, they are usually agreements with the computer system vendors who supply equipment necessary to transmit an electronic image of an instrument submitted for recording.

“E-recording” Process Currently Used In Michigan

Based on documents obtained from title companies and registers that currently provide “e-recording” services, the agreements generally executed as part of the e-recording process are between either the register of deeds and the computer company, or the computer vendor and title companies who submit instruments for recording by electronic means.¹

One such agreement executed between some of the county registers and the computer vendor is entitled “Electronic Recording Memorandum of Understanding” (hereinafter referred to as the “ERMU”). Review of these ERMUs reveal that the computer vendor and a county register of deeds are the only real parties to the agreement, despite the fact that the ERMU identifies the title company as one of the parties needed to electronically transmit instruments submitted for recording. The ERMU omits any reference to persons required to execute and sign instruments reflecting conveyances of interests in real property; the only persons identified and defined in the ERMU as participants in the e-recording process are:

- 1) **The County Register of Deeds** — The county official who receives instruments submitted for recording and records instruments in accordance with statutory recording requirements using digital imaging systems and computer indexing;
- 2) **The Electronic Recording System Provider** — This is the County’s computer vendor which supplies the electronic recording system used by the County Register of Deeds to record instruments (and for all practical and legal purposes, the agent of the Register of Deeds);

Continued on page 19

3) **The Submitter Service Provider** — This is the computer software company and that supplies the electronic interface and delivery system from the “Submitting [Title] Company” to the County Register of Deeds, and is invariably the same computer vendor that supplies the recording processing systems used by the register of deeds ;

4) **The Submitting Organization or Company** (title insurance companies, mortgage bankers, full service banks, Realtors), who have been provided hardware and software through a separate agreement by the “**Electronic System/Submitter Service Provider**”, to enable the transmission of digital information and images of original instruments to the County Register of Deeds for “e-recording”.

The method used to electronically transmit the executed instruments through the “Submitter Service Provider” to the Register of Deeds depends on the level of automation available to both the “Submitting Organization” and the Register of Deeds. Most registers utilize Automation Level 2 for all instruments submitted from title companies and other organizations for e-recording. Level 2 Automation is described in the ERMU as:

“Level 2 Submitting organizations transmit scanned images of ink signed documents along with electronic indexing information to the county. The county performs an electronic examination of the imaged documents and the indexing data, then completes the recording process using the imaged copy and electronic indexing information. The electronic version of the recorded document is returned electronically to the submitting organization along with the electronic recording data.”

Based on the description of the “Level 2 process” above, it is clear that the Register of Deeds reviews only a digital image of the original, paper instrument offered for recording, and never receives or reviews the original instrument to determine whether the signature or mark of the parties, or the acknowledgment of the notary are “original signatures”. Clearly, acceptance of these copies for recording is contrary to the express provisions of MCL 565.201 and prohibited **unless** the county register of deeds delegates his or her administrative authority to the Submitting Organization, **and** an “electronic signature agreement”, exists between the Register of Deeds and the submitting organization.

However, an examination of agreements executed as part of the “E-recording” process used by most registers reveals no express or implied delegation of administrative authority by the County Register of Deeds to the “Submitting Organization or Company”. In fact, ERMU is an agreement executed by and between the County Register of Deeds and the “Submitter Service Provider” only. The terms of the ERMU establishes no direct relationship between the County Register of Deeds and either the “Submitting Organization” (the title company), or the parties required to execute the instrument submitted for recording.

(Computer Systems Vendor) is to assure the identity of the “Submitting Organization” (title company), **not** to assure that the requirements of MCL 565.201 have been met relative to instruments submitted for recording. Indeed, the provisions of the ERMU expressly disclaim any responsibility for assuring the legal efficacy of the “e-recorded” instrument on the part of the “Submitting Service Provider” or the Register of Deeds.

Finally, the fact that no promise or agreement is established between the Register of Deeds and the title companies and its customers (“Submitting Organization”) is made clear by the fact that ERMU states that the additional “recording fees” required to e-record must be paid only to the computer system vendor (“Submitting Services Provider”), **not** to the County Register of Deeds.

Absence of Proper Agreements Put Validity of E-recording into Question

Since the electronic recording process used in Michigan generally involves no direct agreement between the County Register of Deeds and the parties to the instruments submitted for recording and/or their agents (title companies or “Submitting Organization”), the signatures on instruments submitted for e-recording cannot be deemed “electronic signatures” as defined by Michigan’s Uniform Electronic Recording Act (MUETA). In the absence of any delegation of administrative authority by the Register of Deeds to the “Submitting Organization” (title company) to certify the authenticity of signatures on instruments submitted for “e-recording”, the Register is not authorized, and may not accept electronically submitted copies of instruments consistent with MCL 565.201.

In his recent opinion¹ relative to the authority of registers to e-record pursuant to MUETA, the Michigan Attorney General warned:

For a deed or instrument affecting title to be properly recorded, it is essential that it meet current statutory requirement, including among others, 1937 PA 10, MCL 565.201et seq. A deed or instrument that fails to satisfy the requirements for recording may, even though recorded, be ineffectual as notice. [Citation omitted].

Indeed, the provisions of Michigan’s recording statutes expressly provide in pertinent part, that:

Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded...MCL 565.29 [Emphasis supplied].

Of course, there are methods by which all the parties to real property transactions may properly e-record and transmit electronic signatures through the use of more sophisticated technology. However, and until registers of deeds in Michigan offer such technology to the general public, they must agree to permit licensed title companies and other reliable organizations to certify the authenticity of signatures on original instruments submitted for e-recording. Without such “E-Recording Agreements”, the validity of e-recorded instruments will continue to be questioned.

(Footnotes)

1 Public Act 305 of 2000, being MCL 450.831 et

2 2007 Op. Mich. Atty. Gen., No. 7207

3 MCL 450.835 and 450.836

4 There appear to be no agreements executed between the registers of deeds that

provide electronic recording services and the title companies or other organizations who submit instruments for recording.

5 Op. Mich. Atty. Gen., 2007, No. 7207, p.3

MLTA Calendar of Events

2008

February 27-28 Midwinter Convention
Radisson Hotel, Lansing

April 15 & 16 Spring Education Seminar
Soaring Eagle Inn, Mt. Pleasant

May 7 Spring Education Seminar
Livonia Radisson

July 20-22 Summer Convention
Bavarian Inn, Frankenmuth

October 14 & 15 Fall Education Seminar
Soaring Eagle Inn, Mt. Pleasant

October 15 – 18 ALTA Convention
Koloa, Hawaii

November 5 Fall Education Seminar
Livonia Radisson

2009

July 18 -22 ~~Summer Convention~~
Amway Grand Plaza Hotel



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