



THE TITLE EXAMINER

A PUBLICATION OF THE MICHIGAN LAND TITLE ASSOCIATION

FALL 2009

REMINDER:

This fall's seminar in Mt. Pleasant will be Wednesday, October 21 at the Comfort Inn (this is a change of location) at the south end of Mt. Pleasant.

WHAT'S INSIDE

Board of Directors Info	2
Member Spotlight	3
Welcome New Members	3
Committee News	4
Abstractions	5
"In the Pink"	5
Views from the Top	6
Designation Requirements.....	7
On the Move.....	8
MLTA '08 Financial Statement.....	8
Case Brief.....	8
Summer Convention.....	10,11
Summer Convention photos.....	12,13
Convention sponsors.....	13
PAC Home Run Derby.....	14
Sponsorship Showcase.....	15
National Industry Perspective.....	16
Fall Seminar Agenda.....	16
Truth In Lending.....	17
Public Records Article.....	18
Business Review Article.....	19
Deeds Article.....	20
YTD Housing Stats.....	21
Distribution of Proceeds.....	22
New Foreclosure Req.....	22
Mind Capture Marketing.....	23
MLTA Code of Ethics.....	24

Advertisers:

A.S.K.....	6
Beckwith Financial Group.....	9
Lighthouse Insurance Group.....	20
Rhoades McKee.....	21

Doug McFarlane, OUR 2009-2010 MLTA President

an interview by Darlene Wilsey, State Agency Representative, Fidelity National Title Group

While MLTA members have always reaped the benefit of experienced, knowledgeable and diligent MLTA leadership, there has never been a time when we have needed to rely on it more. As we all continue to encounter growing obstacles, with fewer resources, we can be assured that our MLTA President, Doug McFarlane, will be working tirelessly on our behalf.

I have had the pleasure of working with Doug for the past two years and was thrilled to have an opportunity to interview him, to learn more about what he hopes to accomplish, during his tenure, as MLTA President.

(Darlene) Doug, as you begin your term, as President of the Michigan Land Title Association, what are your agenda priorities?

(Doug) A special project for me is the relationship I would like to see develop between Habitat for Humanity and the MLTA. Community service has always been very important to me. Being a good corporate citizen is as important as being individually supportive to the communities that we live and work in.

Another important program will be the development of an oral presentation of what our product is, how it is made and all the steps that go into that. The roll out of this program will, hopefully, be to OFIR so that there is a better understanding in the Department of all that we do. It is my hope that once this program is prepared we will be able to offer it to our members for presentations they may want to make to their local REALTORS and lenders.

Also, the roll out of the MLTA Districts that Past President Viviani spearheaded will be important. Tony has graciously volunteered to continue in the lead on this important project.

Additionally, the Land Title Professional Designation Project is nearly ready to implement. Getting this program out to the membership, so that we can begin to identify and recognize those in our membership who, through a combination of education, experience and performance, have demonstrated proficient knowledge of land title insurance and escrow procedures.

(Darlene) You are surrounded by an experienced and talented Board of Directors and MLTA membership base, how do you plan to utilize this talent to help ensure you accomplish your goals, this year?

(Doug) I think we need to involve as many members as possible in the functions of the association. Be it through service as a director, committee chair or committee member, there is plenty to do and the board can't do it all. So reaching out to the members is not only desirable, but necessary. Through committee chairs, the MLTA will be reaching out, in the near future, to its membership, looking for volunteers. If you have an interest in a particular committee, please let me or any director know.

(Darlene) What obstacles do you anticipate, considering the state of our economy and the challenges facing title industry professionals, in Michigan, currently? What role, if any, can the MLTA play in helping members to overcome these obstacles?

(continued on page 2)



MLTA

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(An interview with Doug McFarlane - continued from front page)

(Doug) Certainly, Michigan has to stop bleeding jobs and losing population, before we can return to a stable real estate economy. That said, there really isn't much the MLTA can do about the state of the economy in Michigan. It will be a challenging time for our members. What the association can do, however, is support the members with programs like those that I identified earlier in our discussion, to give them some tools that will help get them to the top of their game and assure their continued success.

(Darlene) How does the MLTA plan to retain and increase membership, during the next year?


(Doug) By providing programs and services that are useful to our members, the MLTA will focus on both membership retention and acquiring new members. We will be introducing a "Direct Call/Cold Call" program to reach out to non-members to tell them what the MLTA is all about.

(Darlene) How does the MLTA plan to sustain and/or increase PAC donations, during your term as President?

(Doug) Didn't Mike Pryor, President of the ALTA, do a fantastic job of stressing the importance of the PAC, at the summer convention? As the MLTA continues to have an influence in the legislation that affects our industry, maintaining an active PAC is critical. We will be looking at what other states are doing to get ideas that might be useful here. Tim McDonnell, "PAC MAN", is always on the lookout for ideas to raise funds. I know he would welcome input from any member, including volunteers to sit on the MLTA Political Action Committee.

(Darlene) One of the MLTA values state, "We exist to advance the right to transfer interests in real property without undue governmental influence." How is the MLTA preparing to further counter Wayne County's proposal for a government run title company? What can MLTA members do to assist our organization with this effort?

(Doug) As of the time of this discussion, there is a yet unpublished press release out of Wayne County indicating that the Board of Commissioners has adopted a resolution to authorize the ROD to pursue licensure as an underwriter, in Michigan. This should deeply concern every member (underwriter and agent) in Michigan, not to mention the consumers of our products and services. Representatives of the MLTA Board are conferencing today (8/3/09) with representatives of the ALTA to develop our response and course of action. Why the ALTA? Because the potential harm that this will cause our industry and the consumers of our products and services extends nationwide. There is absolutely no doubt that we will be calling on membership to assist.

Yes, undoubtedly, MLTA members will be well served, under Doug's leadership. His agenda is progressive, deliberate and admirable, and, most importantly, with our help, **ACHIEVABLE!** 



THE TITLE EXAMINER STAFF

Editor & Board Representative: Bob Wuerfel - Lighthouse Title Group

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Tom Fiegl, Kasparnet

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



Name: Darlene Wilsey

Position: State Sales Representative
Company: Fidelity National Title Group, including Chicago Title; Commonwealth Land Title; Fidelity National Title; Lawyers Title; Security Union; and Titor
County & Office you work out of: I service FNTG agents, throughout the state of Michigan



MLTA Involvement: I, currently, Co-Chair the newly formed, Community Service/Habitat for Humanity Committee. In addition, I am currently serving as a member of the Communications Committee. I have attended numerous MLTA Seminars and Conventions. I was the Player-Manager (better manager than player) of the reigning Wii Home Run Derby Champion "Metes and Bombs"!

Personal Interests/ Hobbies: I am the proud mom of Justin, 21; and Jordan, 17; and have been married to my high school sweetheart, Craig, for 22 years! I spend most of my time these days, battling empty nest syndrome, with exercise, friends, and lots of WORK (but I love my job, so I don't mind)! Note: As soon as I improve my golf game, I'll be able to hang out with my husband more in the spring, summer, fall, and the occasional warm winter day!

Something about you to share with the MLTA members: I am the founding member of the Hemlock Community Pep Club. Our local high school has no cheerleaders, spirit clubs, etc., so our group, consisting of 8 moms, decorates the school halls with school spirit signs, three times a year. In addition, since 2003, our group has raised over \$20,000.00, for, among other things, a school mascot, band uniforms, spirit scholarships, fireworks, etc. We have accomplished this through numerous and sometimes gross fundraising activities. Please, never shove your half-eaten PB&J sandwich into a can and then donate that can to a can drive (yuck!). In the future, I plan to volunteer to wear the HUSKIE mascot, for home games, but my kids have made me promise that I won't do it, until after they graduate (and leave town!).

Welcome New Members

Title Select LLC - (Farmington Hills)

Clare County Title Company - (Harrison)

Name: Jim Lanzetta

Title: Sr. Vice President and Michigan Division Agency Manager
Company Name: Stewart Title Guaranty Co.
Company location: Michigan Division office is located in the Travelers Tower in Southfield, MI



MLTA Involvement: Member of MLTA, attending conferences and the like for nearly 30 years...member of numerous ad hoc committees through the years dealing with such issues/legislation as condo law reform, mechanic's lien law revisions, line of credit mortgages, state and federal legal/regulatory compliance, tax titles, good funds, register issues, and the like. Member, Michigan Land Title Standards Committee since 1981. Member, State Bar "Title and Conveyancing Committee since c. 1990.

Personal Interests: Very much enjoy following the Tigers, and college football--Michigan being my favorite team since I graduated from there in 1975.

Also enjoy typical family activities, especially travel and following the kids' athletic and social events.

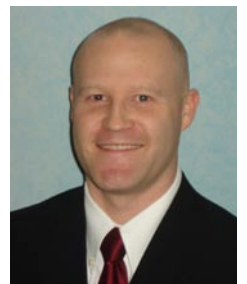
Live in Northville...wife, Jennifer, and two high-schoolers--daughter, Anna (17); son, Nico (14)

Something About You: Have very much enjoyed my nearly 30-year career in the title insurance industry...have been very fortunate in being surrounded by so many individuals through the years who have proven to be not only very experienced and competent associates, but also wonderful friends. Very excited and grateful to have just recently joined Stewart Title, and having the opportunity to associate now with its Michigan agency team, represented by Colleen Devlin and Jennifer Jacobs, as well as the opportunity of course to continue working with, and along side of, my great long-time associate and friend, Doug Smith, who also just recently joined the Stewart team as Michigan State Counsel.



Name: John Bommarito

Position: Corporate Counsel
Company: Attorney's Title Agency
County & Office you work out of: Oakland - Farmington Hills Office - 31440 Northwestern Hwy.



MLTA Involvement: Legislative Chair; Education seminar presenter; member of the education and membership committees; published in the MLTA Examiner.

Personal Interests/ Hobbies: music and sports - I enjoy listening to and playing a variety of musical styles, mostly jazz and blues. I enjoy playing guitar, bass, and piano. Also, I enjoy playing different sports, typically whatever you can get a group together and do and spend some time outside. When I'm not doing any of those things, I enjoy reading and spending time with my family and friends.

Something about you to share with the MLTA members: Thanks to the MLTA and its' members for the support. What a great group of people who always make the seminars fun and I'm glad to call friends.

Committee News


Community Service/Habitat for Humanity Committee

by Darlene Wilsey, Fidelity National Title Group

Greetings from the Community Service/Habitat for Humanity Committee. That's right! The MLTA has a new committee aimed at bringing the MLTA and its membership into close partnership and support with the Habitat for Humanity organization. The new committee is being co-chaired by Cy Tope of Corporate Title Agency and Darlene Wilsey of Fidelity National Title Insurance Co. At this summer's convention in Grand Rapids nearly 40 members suited up to assist on a HFH house building project and the feedback from that event has been overwhelming on the positive! As a result of this and our current president's long time vision the MLTA has formed this new committee. Our mission in a nut shell will be to provide a conduit for the MLTA and its membership to contribute in a number of ways to this great organization. The partnership we aim to create will allow MLTA members to get involved with HFH either monetarily through programs we are setting up and/or physically through putting your strong backs to work on HFH projects. The committee is currently designing the

program and our goal is to have it complete at the end of 2009. Once completed we will fully inform the membership of what all is involved and we hope in the meantime to gain your support and interest. We look forward to working with all the members of the MLTA who are willing to pitch in on this great effort and feel free to contact either Darlene or Cy if you want to get involved.

Darlene.Wilsey@fnf.com

Stay tuned for more to come! 



Legislative Steering Committee *by Jerome Jelinek, Corporate Title Agency*

New information since the preceding committee meeting occurred on the following. For the complete list of all "Legislative Bill Tracking" information, please log onto www.milta.org; insert member name/password, then go to "Resources" area of website.

E-Recording: A request was forwarded to Steering to approve an amendment to the draft legislation. The amendment altered the makeup of 6 of the 7 members of the commission. The 3 title industry representatives matching the 3 ROD members would be changed to 1 title industry rep., 1 loan industry rep., and 1 rep. from the State Bar, Real Property Law Section. Although the change does not maintain equal representation between registers and the title industry, the broader representation on the commission is positive and both the lenders and real property law attorneys will share our concern regarding priority and perfection of recorded documents.

HB 4640: This bill requires notaries to obtain thumb prints from those whose signatures are being notarized. Issues include existing legislation that provides adequate safeguards; the usefulness of paper vs. electronic thumb prints is questionable; the current impracticality of widespread implementation of electronic thumb prints; and the state's lack of preparation to handle electronic thumb prints.

HB 4503/SB 332 (Affidavit Bill): Steering is concerned with the recent Neal bankruptcy decision holding a copy of a mortgage attached to an original affidavit did not perfect the mortgage and establish its priority. This ruling is contrary to a previous bankruptcy ruling. The committee will work to craft language that could be added to the Affidavit Bill providing that recording a document in this manner does provide record notice and perfect the lien holder's interest.

Re-Insurance:

The blue back version of the bill Sen. Jason Allen requested from the Legislative Service Bureau is expected today. If acceptable, Sen. Allen should be able to introduce the legislation in the next week or so. The legislation will increase the re-insurance limits in Michigan from 10% to 50%.

House GOP Urban Blight: The caucus is soliciting MLTA input on how to better address the procedural problems involved in this issue. The committee will inquire further to define the specific needs of the caucus. Further action will be discussed once that has been completed.

ABSTRACTIONS

by Allan Dick, CEO, Best Homes Title Agency, LLC



Boy, everywhere you turn there seem to be articles about foreclosures, short sales and default strategies. Needless to say nothing is simple about these situations. One strategy that seems to be more prominent of late is for some borrowers, capable of maintaining their house payments, but whose home values have dropped below the outstanding balance of their mortgage, to walk away from that home and mortgage, and purchase another home at today's bargain prices. There are all sorts of limitations and negative ramifications connected with such a scheme. But, it is out there. Short sales, too, have some long-term issues regarding the borrower's credit standing. Many lenders treat those similar to a foreclosure. And then there are potential tax complications. Mortgage modifications have also been in the news of late, as the State of Michigan passed a law, which delays foreclosures until a borrower is given notice of an opportunity to modify their mortgage loan, to help prevent foreclosure. Perhaps not surprisingly, reports are that not many people are taking advantage of this legislated procedure. Time of course will tell. One recent article noted that while government policymakers claim that it's a good deal for the lenders to cut borrowers a break on mortgage payments to keep them in their homes. That may not be true. Only if the borrower can't sustain the payments without the restructuring – but will be able to keep up with more modest terms – is that mutually beneficial. If the borrower is likely to fall behind again after the modification, again resulting in foreclosure, the delay obviously costs the lender. And lenders are not very motivated to help those who can make their payments.



Hey, that was some Summer Convention in Grand Rapids! Even our good friend, Lester Sam Hill, was raving about it. The busload of MLTA attendees that spent an afternoon working on a Habitat for Humanity home did us all proud and had a good time in the process. And the MLTA-PAC fund raiser, the Wii Home Run Derby, was a hoot! (There's that fundraising Tim again.) Many fun highlights in the competition, topped by the 9-out-of-ten first round slugging of Kim O'Connor – wow! The convention capped a spectacular year – a credit to outgoing President Tony Viviani and his Board of Directors. It was also a great launch pad for new President, Doug McFarlane, who headed up the Convention Committee. One of the many convention highlights was the passionate presentation of ALTA President, Mike Pryor. It was truly refreshing to meet and listen to such a knowledgeable, down-to-earth title communicator. Our other speakers were also dynamic and entertaining, as you will read in the convention recap article in this issue. Thanks to all who attended and contributed to this year's convention. The agent attendance was inspiring! Join us next year.



The MLTA Fall Education Seminar will be another information filled presentation, including, among other things, a timely review of the new RESPA procedures, which will be required as we greet the new year, and an interactive presentation from a couple of Registers of Deeds to help give us greater insight as to recording issues, guidelines and pitfalls. Should be interesting! And, as you may have noticed on page one, the Mt. Pleasant session will be at a different location this October 21. We will give the Comfort Inn (at the south end of town) a try this time around. The November 11 session will be at the Livonia Radisson, as usual. See you there.

IN THE PINK

by Allan Dick, CEO, Best Homes Title Agency, LLC



When you think Pink, what comes to mind? Pink Floyd? Pretty in Pink with Molly Ringwald? Pinky Tuscadero (from Happy Days)? Or the pink ribbons worn to symbolize the fight against breast cancer? Well, you can add one more, related to the pink ribbons – the pink hair of Tim McDonnell, dyed pink as a result of his extraordinary fundraising for the Michigan Breast Cancer 3-Day Walk this August. Tim raised over \$20,000 for his three-day ordeal (and listening to his review of the three-day, 60+ mile walk, it was indeed an ordeal), the top fundraiser in the entire



State of Michigan, which raised over \$4.7 Million! He was also in the top ten nationally!

For those of you not aware, Tim's wife, Andi, was diagnosed with breast cancer a year ago, and she has just completed her last chemo-therapy procedure. Her story is a scary one, beginning with concern about a lump, which was thought to be benign – but was not! Surgery revealed otherwise, and that was followed by more

surgery, imaging, blood work, chemo-therapy, hair loss, radiation, on-going drug therapy (did I say Tim had an ordeal?) and countless examinations. Through it all, Andi has remained positive and strong, as have her husband and two boys, young Tim and Joey, budding McDonnell fundraisers and regulars at our summer conventions.

Tim McDonnell is enthusiastic, passionate and sincere – and extremely thankful! He has a beautiful wife and family, lives within miles of world-class medical facilities, and has excellent health care coverage. Many, of course, are not so lucky. Recognizing this, Tim set out to find a way to give back. His goal was a nickel for every foot in the 3-day, 60+ mile walk (for which he trained several weeks – 20 miles/day amounts to an average of 8 hours of walking each day). That figures out to \$15,000. Unrealistic? Perhaps, especially in these economic times.

But, as I said, Tim is passionate, and he was devoted to this cause, as near to his heart as any could be. To promote his fundraising effort, he promised to have his hair dyed pink, if he reached his goal. Boy, did he reach his goal – and then some! (See the picture.) Of course, his even greater goal was to have his lovely wife by his side. They achieved that as well. Bravo! And next year, they will both be walking! 🐾

Views from the Top

Greetings from the North to all my land title buddies. Hope this wonderful fall weather finds you all in good health and good humor. Sure was a doozey of a summer, eh? Some are saying that autumn started in June!!!

What a summer convention!! Those honcho's with the MLTA sure know how to "put on the Ritz". And Mike Pryor, the Prez of the ALTA, what a straight shooter!! It was really great to see the big turnout of agents and new faces.

How are things going down there? We hear that the big city ROD is back at it with starting up his own underwriter. Must be he has his eye on all those huge profits the underwriters are makin' in his county.

Speakin' of the government, me and my law partner Gordie Gillespie have been knocking ourselves out trying to figure out a way to get some of that stimulus money that's flyin' around. We laid off all the employees we had left (Mildred wasn't busy anyway) figurin' we could maybe get a stimulus grant to hire her back. Mildred got wind of our antics and wrote to the Federal Czar of Bogus Grants tellin' him what we did. The Czar worked in the collections department of Acme Loans in Chicago before gettin' the Czar job so me a Gordie been lookin' over our shoulders a lot lately. We haven't heard from him yet but we are hopin' that hiring Mildred back and givin' her a raise will show our good faith. Did you every wonder how many of those Czars we have now and what they all do? Near as me and Gordie can tell there must be one for everything that comes up. Are they

all volunteers?

Now we are lookin' at maybe get a stimulus to go green. We are thinkin' there must be a need for more energy so we got in motion to build a steam powered windmill. We sent a nice letter to the Steam Powered Windmill Federal Czar (yup, they got one). He says he got the letter and will get back with us after it is reviewed by the Federal Czar for Letters. We didn't see this one listed or we woulda sent it directly to him. Seems sorta complicated, eh? Keep your fingers crossed...everyone else's are.



My good friend Judge I.B. Wright says that if me and Gordie spent as much time looking for more orders as we did looking for free money we would be rich men. That might be true but we think that the money we are going after is ours to begin with so it ain't "free". Sounds like a tax revolt is coming to the North!!! Look for it comin' to a town near you soon!!

Well, anyway, I will be talking to you again soon and this is the view from the North so you can see from the country what it looks like from here to there from time to time.

Regards,
Lester Sam Hill



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APPLICATION AND REQUIREMENTS for THE DESIGNATION of Certified Land Title Professional & Associated Land Title Professional

by Sarah Sutton, State Agency Manager, Fidelity National Title Group

Important Information About MLTA's Education Designation Programs....

A unique development for the land title insurance industry is the professional recognition as Certified Land Title Professional (CLTP) or Associate Land Title Professional (ALTP) 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, provides 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. To assure that the awarding of this high honor is conducted in the most equitable, non-capricious manner, The

Michigan Land Title Association Board of Directors has approved the following conditions and stringent procedures for candidacy and designation. Please review the Procedures for Designation, Requirements for Designation and Requirements for Candidacy before inquiring or applying for designation.

Your designation as a Certified Land Title Professional affords you the ability to become a single member of the Michigan Land Title Association at a reduced rate if you are working for a company that is not a member of the Michigan Land Title Association. With your single membership you may reap the benefits of an Associate member.

Your designation as a Certified Land Title Professional or an Associated Land Title Professional also affords you a 10% discount for seminars held by the Michigan Land Title Association for continuing education credits.

Your designation as a Certified Land Title Professional will provide name recognition on the Michigan Land Title Association's Website in a separate section designated specifically for Certified Land Title Professional Designees.

Requirements for Candidacy

Before becoming a candidate for either professional designation, an individual must meet the following requirements:

1. Have a minimum of 5 years employment with a Land Title Insurance Company, an Agent/Agency or Abstractor authorized to conduct business in Michigan.
2. Submit a letter of recommendation from a senior officer of present employer or underwriter.
3. Submit personal reference letters from 2 persons who are not relatives of the applicant.
4. Be a member in good standing of the Michigan Land Title Association or be employed by an underwriter or agent member in good standing.
5. Be a member in good standing of the Michigan Land Title Association or be employed by an underwriter, title agency/company or abstract company member.
6. Submit copy of current individual Michigan Title Insurance Producer License. Candidate must be a licensed title agent in Michigan and must not have had a title insurance producers license or bar license suspended or revoked by the State of Michigan or any other State or governmental authority for a period in excess of one (1) calendar year. If such suspension or revocation is less than one (1) calendar year and the individual has been reinstated, then the point structure for such candidate shall remain cumulative. If such suspension or revocation is greater than one (1) calendar year and the individual has been reinstated, then the point structure for such candidate shall accumulate only from the date of such reinstatement forward.

Requirements for Designation

To become recognized as a Land Title Professional, an individual must:

1. Submit an official application for candidacy accompanied by a \$75.00 non-refundable application fee.
 2. Earn the minimum amount of evaluation points as established by the Board of Review: **CLTP - 1250 Points ALTP - 900 Points** (NOTE: Minimum point requirements also exist for specific areas of qualification.)
 3. Upon successful completion of these requirements, remit a non-refundable fee of: **CLTP - \$150.00 ALTP - \$ 75.00**
 4. Pass a written examination administered by the Board of Review.
 5. Maintain a current individual title insurance producer license in Michigan. If this is not maintained, the designee can no longer use the designation.
 6. Be an employee of an agent/agency/abstractor or underwriter that maintains an active membership in the Michigan Land Title Association (see general membership information on last page of application – for more in depth information regarding membership definitions – contact MLTA). If membership relationship is not maintained, designee can no longer use the designation. (No more than six months can pass between places of employment with a member company for the designation to remain in place).
 7. Closers wishing to obtain the designation must have a title license or pass the state exam to obtain a title license in order to be eligible.
 8. Once the designation is earned and recognized by the Board of Review, the designee will be required to continue to earn 100 education points per year (as outlined in this program) to maintain the designation.
 9. Meet requirements for candidacy listed in section above.
- NOTE:** The Board of Review reserves the right to meet with any candidate to review the application and/or written examination.

Statement of Assets, Liabilities and Fund Balances

Michigan Land Title Association

As of December 31, 2008

ASSETS

Checking – Capitol National Bank	\$ 3,386.96
Investment Account – Capitol National Bank	\$201,736.46
Prepaid Insurance	\$ 1,039.69

TOTAL ASSETS \$206,163.11

Liabilities:

Prior Year Fund Balance	\$85,721.85
Retained Earnings	\$24,420.02
Current Year Net Income	\$96,021.24

TOTAL EQUITY \$206,163.11

After reviewing, it has been determined that the books are in balance.

Reviewed by the MLTA Audit Committee:

Tim McDonnell, Chair
Anthony Viviani
Douglas McFarlane
Catherine LaMont
Allan Dick

ON THE MOVE...

Byron “Pat” Gallagher of the Gallagher Law Firm, PLC with offices in Lansing and Detroit has been appointed by the Attorney Discipline Board as a hearing panelist. The ADB is the adjudicative arm of the Michigan Supreme Court for discharge of its exclusive constitutional responsibility to supervise and discipline Michigan attorneys. Hearing panels composed of three attorneys conduct trial-level proceedings in which the Attorney Grievance Commission has filed a formal complaint alleging that a member of the State Bar of Michigan has committed misconduct. A hearing panel can order a public reprimand, suspend the attorney’s license to practice law in Michigan or revoke the attorney’s license.

Lighthouse Title Group

is please to announce the addition of

Tony Viviani

as Regional Vice President / General Counsel.

Tony will be working with various Lighthouse locales, underwriters and attorneys.

*If your company would like to share information
in this section, please email
jsmallldon@lighthousegroup.net*

Case Brief: Bankruptcy Court Rules that Recording Affidavit of Lost Mortgage Does Not Perfect Interest In Property

By: Adam Kutinsky, Kitch Drutchas Wagner Valitutti & Sherbrook



MCL 565.451a governs the recording of an affidavit affecting interests in property and is frequently relied upon to record a copy of a lost original mortgage following a real estate closing. The purpose of recording an “Affidavit of Lost Mortgage” is to place third parties on notice of the mortgagee’s interest. The practice is common in Michigan and has generally been accepted as satisfying the notice requirements under MCL 565.29. The practice has further been supported by county register of deeds which routinely accept the affidavits for recording.

Recently, however, the US Bankruptcy Court for the Eastern District of Michigan issued an Opinion (In re: Nathaniel and Carol Ann Neal; Case No. 08-57254-R; . No. 08-5147) finding that such an affidavit does not satisfy the recording requirements under Michigan law and, therefore, does not validly perfect a mortgage.

Since the original affidavit does not convey an interest in property and a copy of a mortgage does not contain an original signature of the grantor, the Court found, it does not meet the requirements for recording a real estate conveyance under MCL 565.201. Moreover, the Court stated, the plain language of MCL 565.451a was not intended to permit the recording of an affidavit of lost mortgage and as such, does not provide a basis for such an act. Therefore, despite the fact that the affidavit may place third parties on notice of the bank’s interest once accepted for recording by the register of deeds, the Court found that the mortgage is not properly recorded under Michigan law and, therefore, ineffective to perfect the mortgage.

It should be noted that the Opinion was issued by a district court bankruptcy court which does not carry significant weight in state court proceedings or federal cases outside of the particular district. Additionally, the Opinion related to the trustee’s ability to avoid a mortgage under the bankruptcy code and therefore, may not necessarily be relevant to a priority dispute under Michigan law. However, courts may adopt the Opinion’s reasoning if they find it persuasive.

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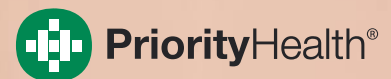
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2009 MLTA Summer Convention was a Home Run

 by Bob Wuerfel, President -Lighthouse Title

July 19 through 21 saw Michigan Land Title's National Pastime occur.....the Annual Summer Convention. This year's convention, centered on a Baseball Theme, was held in Grand Rapids at the Amway Grand Plaza, with over 40 Agent/Owners and 30 Underwriter Representatives and Attorneys. Add in the several sponsors, vendors and spouses/significant others you can see that the numbers were indeed impressive. The driving factor behind this good turnout was the effort of several members who made it a point to call dozens of colleagues an encouraged them to experience convention and networking, the other factor was the MLTA's BOD decision to keep the price the same as 2008 even though the venue in Grand Rapids could have been more.



Sunday evening, July 19, kicked off the Convention with a well attended Ice Breaker Reception. The Imperial Ballroom at the Amway was abuzz with over 100 people sporting MLTA name badges and lanyards. The buzzing and chattering turning to Awe and Amazement (well maybe not that awe or amazing, just seemed that to us participants) as the exciting Wii Home Run Derby competition among five teams took place to raise money for the MLTA PAC, spearheaded by our very own Tim McDonnell. See Tim's story on the Wii Home Run Derby in this Newsletter on page 14, which has the details of this great event! After the first two rounds of the Homerun Derby wrapped up the evening dinner took place. Outgoing MLTA President Tony Viviani, welcomed the large gathering and thanked everyone attending!

Tony Viviani opened the Monday morning, July 20, session by thanking all of our Convention Sponsors as their sponsorship is key to the success of the MLTA convention. All members received an MLTA carrying bag containing materials from every sponsor (see list on 13). Our Convention Exhibitors: A.S.K. Services, Data Trace, Kaspernet, SoftPro and TSS Software also spoke a few minutes about their products and services.

Tony then thanked Past-President Mary Lou Hartwell for her seven years of dedication to the MLTA with her BOD roles and duties. Mary Lou will still be around as she'll be chairing the Agent/Abstractor Committee. Tony also thanked incoming President Doug McFarlane and incoming President-Elect Tim McDonnell as they were instrumental throughout the Tony's Presidential year to converse, goal set and strategize with. Tony's last duties as MLTA President involved the Election of Officers for the 2009-2010 as Catherine LaMont was nominated as Secretary/Treasurer, joining Doug and Tim in the chairs, while the two new Board Nominees were Lisa Cicinelli of Old Republic National Title and Meredith Weingarden of Fidelity National Title. Motion to Accept the new 2009-10 Officers was seconded and affirmatively supported by the MLTA members in attendance. The last order of



business by Tony was requesting approval of a Bylaw Change to add Legislative Steering Committee as a standing committee and amend the duties of the Legislative committee. This too was seconded and affirmatively supported by the MLTA membership.

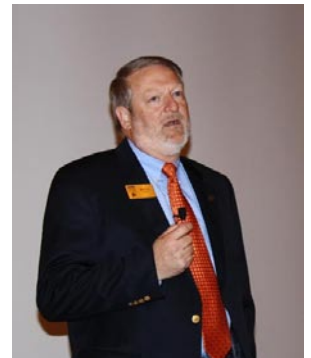
10 Randy Watkins of OFIR was recognized for his 20 years of

service to the industry and was presented a plaque for this service and relationship with the title industry. Also, Mike Draminski was introduced as new OFIR representative.

Once the order of business was handled, our featured speaker, nationally known Darryl Turner of Title Solutions Group, stepped to the plate to provide the MLTA Members with ideas and strategies in the current real estate market. Darryl utilized acronyms in many points of his presentation as he indicated that the real estate market is a FIFO (First In, First Out) market. August of 2005 saw the beginning decline of the real estate transactions...ahead of the national economic downturn. If the forecasters are predicting a national upturn in 2011, then the housing sector will turn sooner as the housing turn will trigger upturns in other sectors, which all dominoes to the national level. Darryl did say that when the real estate market returns, he predicts it will be comparable to the levels of 1999 when the market was solid and growing steady, not the 2003-2004 market where a lot of growth was speculative in nature. Darryl stated that $E+M=R$. E = Economy; M = our business Model; R = our Results. We can't change the Economy as it is what it is, yet we want different and great Results in this Economy. The only way to change our Results is to change our business Model! Using old models moving ahead will NOT work.

Darryl mentioned that we want to have "model with a GAP" G = Goals; A = Actions; P = Persistence. Darryl defined Goals as telling others/writing down what you are going to do. By doing so, others are aware of the Goals can help in getting there. He stated Actions means don't procrastinate, it's easy to procrastinate when your Goal is not known or set, but when Goal is set, action and doing involving TEAM (Title, Escrow, Admin, Marketing) members are key. Persistence on keeping the Goals at the forefront and Actions continual is the glue to make your GAP and new business model a success! Darryl's presentation was dynamic and the two hours he spoke and interacted with the membership went by quickly.

Next up in the batter's box of Monday morning presenters was American Land Title Association President, Mike Pryor. As Mike stepped to the podium, he was pelted with a barrage of soft baseballs, spearheaded by John Voso... I'm not sure how this will be affecting Mike's remittals to Old Republic when he returns to his agency in Arkansas. After we all had our moment of fun, Mike had our attention with his message, passion and dedication to our industry. Mike stated that now is an exciting time in our industry. With all the bank issues, bailouts and subsequent fallout, our Land Title industry is being consulted for assistance and solutions in states as well as Washington DC. We as MLTA and ALTA members need to provide even more support, both financial/PAC and participatory as we need to keep this momentum going.



Mike also mentioned that we if we forget who we are as an industry, we will all suffer the consequences. We need to educate the Regulators, Legislators and Consumers on our value and that we are the guardians of the property transfer system. If we quit searching records, then public records can domino to less accuracy without our searching checks and balances. Underwriters AND Agencies are part of ALL problems as well as part of ALL solutions. Ethics, integrity and value structure can be worked on because our associations are relatively small and able to change IF we ALL make up our minds to do so. Mike wrapped up by stating the VALUE of the Michigan and American Land Title Associations and our need to continue to encourage new membership and contributions to our PAC to allow our voice to be heard in Lansing and Washington. For more on Mike Pryor see www.mikepryor.net.

Monday afternoon was dedicated to two Habitat for Humanity events: The Golf Scramble at "The Mines" Golf Course where over 2 dozen golfers participated and a portion of their registration fees went to Habitat for Humanity. Meanwhile, a busload of nearly 50 MLTA members and ALTA President Mike Pryor were shuttled to a Habitat Home being built in a Grand Rapids neighborhood. With saws buzzing, hammers pounding, lots of smiles and no injuries, who knew that title professionals had a carpentry skill too? Lots of work was done in nearly four hours of work by each member for a family that is hoping to have their home done in time for the Christmas Season. This was the brainchild of incoming President Doug McFarlane and fellow MLTA member Gregg Nathanson and it was a great success.

The President's Reception and Banquet was next on the Monday evening agenda. Before the Banquet, the Final Round of the Wii Home Run Derby took place between the Lighthouse Beacon Bombers and Fidelity's Metes and Bombs team, which was won by Fidelity by a score of 16-13, but the bigger winner was the MLTA PAC. A wonderful dinner in the Pantlind Ball Room in the Amway followed. After dinner, ALTA President, Mike Pryor was invited to install Doug McFarlane and the rest of the 2009-10 board members. Officially installed, Doug McFarlane took time to thank his wonderful wife



Melanie, the Board Members that he has and will enjoy working with over the next year, and the MLTA members for entrusting the leadership of our fine organization to him, for which he is not taking for granted. Doug is looking to continue working on many of the items currently on the MLTA docket such as: government involvement as a title agency in Wayne County and statewide districts that the MLTA is launching for more communication at a local level with MLTA Board and Committees. Doug also has a passion for the Habitat for Humanity Organization and will be looking to repeat the Home Build next year and also expand into the local areas, maybe even districts. Doug feels that it is vital to give back to the communities in which we all work in and Habitat is ideal as it involves the very product we as an association insure the title to.....homes! We look forward to Doug's leadership over the next year.

After Doug's speech, committee chairs were recognized with a certificate for their work over the past year. Sarah Sutton, 2008 recipient of the Robert J. Jay award, was then invited to announce the 2009 recipient recognizing outstanding service and dedication to the MLTA. Jerome Jelinek of Corporate Title was the recipient as he has been heavily involved with the MLTA, serving seven years in a board capacity, was the liaison between MLTA and OFIR and is currently involved with Legislative Steering, monitoring the various bills and matters that impact our industry. Jerome is much deserved of this award and we thank him for the service he provides to our Association. Tim McDonnell followed to recognize nearly 2 dozen individuals for their contributions to the MLTA PAC for the fiscal year 2008. Tim's son, Joey, was recognized with a Life Member Pin for his many years helping his dad selling the PAC cigars and other items. These members names can be found in the column on page 14, and each member received a lapel pin to recognize them. Monday evening wrapped up with a Pub Crawl, organized by Diana Parker, to four nearby bars.



Tuesday morning, July 21, began with the MLTA Committee breakfast and a welcome by newly elected President Doug McFarlane. Doug took this opportunity to again thank his wife,

the many sponsors of the convention, the winners of the baseball themed silent auction items, and also mentioned that 2009 MLTA Dues were reduced 20% and that the Fall Seminar in Mount Pleasant was going to be at a new location, the Comfort Inn.

Doug was pleased to introduce the Tuesday morning guest speaker and personal friend, Dave Keilitz. Dave is Executive Director of the American Baseball Coaches Assn and was Baseball Coach at Central Michigan University and has been elected to the CMU and Baseball Coaches Hall of Fame. Dave talked about aspects of being a leader, whether on the ball field, office or our communities. He stated that leadership may start at the top but it doesn't end there with leaders, it goes up and down through the organization/team.

There are two key areas of Leadership Traits: Relationships and Attitude. In Relationships, people want and need to feel important to the organization, Dave stressed this is the priority number one! Know the names of their spouses, thank them for the good work they do and ask them for input. If you do this, they will indeed become important and feel important and be happier and making a difference! As for Attitude, Dave stated that whatever we do has to be something great, it's all in the great attitude and how you face what's in front of you. Personnel problems will linger on any team or in any office, but deal with constructively and firmly and with a professional attitude and it will keep negativism from becoming an issue. Dave recommended picking up a copy of the book called the "Fred Factor" by Mark Sandborn; it's about a mailman with a great attitude about his job that has changed the world for many people! Dave wrapped up his time by stating that good leaders also look to be of service to others and our MLTA Habitat for Humanity Build and the community service is just one great example. He stated that we should never lie down at night unless we've made one person wiser or better that day! Dave's message was indeed a grand slam and appreciated by all MLTA members!



Tim Ward, our MLTA Lobbyist in Lansing, followed Dave to give us a "Lansing Update". Tim stated that Dave's message of effective Leadership was perfect and tied into what Tim wanted to let all of us know. Grassroots efforts by connecting with our State Representatives and Senators through calls, letters and visits portray leadership in Lansing. When we lead by these and other examples, the people in Lansing will know who we are and what our industry represents. It is KEY for all of us to do as it will send a broader message about our industry, and our issues and we will be listened to. Tim stated that there are massive budget issues that the State is grappling with to resolve before rolling out the new budget, which is due out in October for the 2010 fiscal year. As for Land Title Issues there are over 30 bills MLTA is involved with reviewing. Tim stated the process of how the MLTA Legislative Committee reviews the bills at hand and makes recommendations to Legislative Steering, who then filters the bills and positions further and presents to the MLTA BOD. All of this can be found in the Legislative Bill Tracker Insert that has been located in the MLTA Title Examiner and is also on-line for members at www.milta.org.

Tim McDonnell wrapped up the Tuesday session with a final look at the Silent Auction, PAC contributions and golf outing. Tim thanked the following donors: Brent Warner, Diana Parker, Tony Viviani and Jennifer Jacobs, for contributing the baseball themed silent auction items. Tim stated with excitement that with the: Auction fundraiser, Wii Home Run Derby, Wii Auction and Cigar Sales, a total of \$9,391 was raised for the MLTA PAC!!!! As for the golf winners: Closest to the Pin - Sky Weaver; Longest Drive women - Jean Keeby; Longest Drive men - John Bommarito; Lowest score Team - Rod Eldridge, Dennis Bila, Wes Parkinson and Brent Warner. This concluded our wonderful 2009 Summer Convention that was truly a Home Run!!!!

Summer Convention 2009 - Grand Rapids



MLTA Habitat for Humanity Build 2009



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Wii Home Run Derby hits it out of the park for the MLTA-PAC at Summer Convention

The Wii Home Run Derby—Hit One Out for the PAC event was a big success. Not only did it prove to be a successful fund-raising event but the Wii machines provided a lot of entertainment for the entire crowd with just about everyone giving it a try. In total, \$9,401 was raised for the MLTA-PAC during the convention.

There were five teams involved in the competition and each team did a great job raising funds for the PAC. The teams were as follows:

<i>Slammers</i>	<i>Beacon Bombers</i>	<i>Beach Bums</i>	<i>Metes and Bombs</i>
Diana Parker	Connie Curio	Lisa Cicinelli	Darlene Wilsey
Kim O'Connor	Bob Wuerfel	Phil Savich	Tom Lico
Wes Parkinson	Jeff Beyer	Cy Tope	Dan Lievois
Debbie Wiley	Tony Viviani	Michael Donovan	John Bommarito
Brent Warner			



To get to a final match, an elimination round and a playoff round were held during the Convention Opening reception. In the elimination, the teams were awarded some bonus homers based on their fundraising with the top team getting 10 bonus runs, then 8, then 6, then 4 then 2. Each team fielded 3 batters and each batter got 10 pitches. Kim "Don't call me Babe Ruth" O'Connor impressed the convention crowd with a near perfect 9 out of 10 home runs to lead her team into the playoff round. Cy Tope and Bob Wuerfel were the next highest with 7 dingers each! Makes you wonder what these folks are doing all day!?!?!

That preliminary round ended with the following homer tallies:

Slammers 27
Metes and Bombs 20
Beach Bums 16
Beacon Bombers 13
SWiing and Some Misses 2



The teams then moved into the playoff round with the Slammers pitted against the Beacon Bombers and Metes and Bombs versus the Beach Bums. The first match between the Slammers and the B-Bombers was a close one; but, Bob "I have a stadium with my name on it in Traverse City" Wuerfel stepped up to the plate and hit 4 homers to give the Beacon Bombers a 10-8 victory and a spot in the finals.

The second semi-final match was also close; but, it looked like the Beach Bums might run away with it when Phil Savich got 1 homer and Cy Tope matched his 7 out of 10 performance from the preliminary round. However, teammate Michael Donovan was unable to find the outfield seats during his at bat. Darlene Wilsey, Tom Lico and Dan Lievois combined for 9 runs for the Metes and Bombs team and they moved on to the finals with a 9-8 win over the Beach Bums.

The final round was held just prior to the President's Reception on Monday evening. Bruce Redman was just about to suit up for the Metes and Bombs team because John Bommarito—the reserve slated for the final—could not be located. It turns out that he had an important meeting with representatives of BALCO Labs regarding "the clear" or was that clearing up title issues? John arrived shortly before game time and took his place in the line-up! The Metes and Bombs team batted first with Darlene hitting 5 homers, John adding 3 homers and Tom "The Capital Crusher" Lico added 8 homers from the clean-up spot. With the mark set at 16, the Beacon Bombers had their work cut out for them. Tony Viviani led off with 2 homers and Jeff Beyer added 5 which meant that Bob Wuerfel had to be a perfect 10 for 10 in order to pull off the victory. Bob got the first 4 homers before missing and he finished with 6 making the final score 16-13! The Metes and Bombs—Darlene Wilsey, John Bommarito, Tom Lico and Dan Lievois took the Championship!

A big MLTA-PAC THANK YOU goes out to all of the teams that participated in this year's fundraiser. Without your participation and fundraising, the event would not have been such a great success! The two Wii units were auctioned off with Doug McFarlane buying the first one on Sunday night and Bruce Redman buying the second one on Monday night after some spirited bidding encouraged by Mike Pryor, ALTA President!

The MLTA-PAC also held a silent auction thanks to Tony Viviani, Brent Warner, Jennifer Jacobs and Diana Parker who all donated baseball related items to be auctioned off to the highest bidder. The silent auction added \$575.00 to the total PAC funds raised. The winning bidders were Bob Wuerfel, Sharron Ardanowski, Mary Lou Hartwell, Tom Lico and George Amar.

The youngest member of the PAC Committee, Joey McDonnell was hard at work selling cigars for the PAC during the cocktail hour on Sunday and Monday evenings. Armed a box of 50 fine cigars at \$10.00 each, he raised \$290.00!!! Way to go Joey!

Derek Dalling assisted PAC fundraising once again this year by providing and selling the Golf Survival PAC's for the annual golf outing. The Survival PAC's are a collection of items that will assist each team in improving their game. In other words, it is a bag of cheats! All teams took advantage of the cheats and this raised an additional \$250.00 for the cause. Thanks again, Derek!

There is still time to make a contribution to the MLTA-PAC. We would ask that all members consider making an annual contribution to the MLTA-PAC. Our PAC has raised an average of \$15,000 per year over the last few years. As an industry, I know we can do better than that. Please support the MLTA-PAC—remember no contribution is too small!!!

MLTA - PAC Annual Giving Awards

Each year the MLTA-PAC recognizes members who have made contributions during the prior year that exceed designated giving levels. There are five different award levels and they are:

LIFE	\$1000+
PRESIDENT	\$500--\$999
GOLD	\$350--\$499
SILVER	\$250--\$349
BRONZE	\$150--\$249

The following members were recognized at the Summer Convention; but, you can never say "Thank You!" enough. We would like to thank the following members and recognize them for their support of the MLTA-PAC in 2008! Awards were presented to these members at the 2009 Summer Convention. If you were not present at the convention, your award will be forwarded to you by the MLTA office.

LIFE

Doug McFarlane
Joey McDonnell

PRESIDENT

Margo Hannum
Diana Parker
Bob Wuerfel

GOLD

Sarah Sutton
Tony Viviani
Allan Dick
Lisa Cicinelli

SILVER

Jacquie Brink
Steve Nadolski
Linda Hinshon Canter
Jill Scholtz
Neil Sherman
Pete Schneiderman
Stephen Rice

BRONZE

Cathy LaMont
Colleen Devlin
Sharron Ardanowski
Darlene Wilsey
Nancy Amar
Jeff Basil
George Amar
Tom Henrikson
Rich Cook

Sponsorship Showcase

by Marcy Welburn,
Transnation Title Agency

A BIG THANK YOU!!

The Michigan Land Title Association would like to extend a special thank you to all of our 2009 Summer Convention

Sponsors. We could not have had all of the feature at the convention without these sponsors' dedication and commitment to our organization. Should you have a specific need please talk to our sponsors for support.

They bring a variety of services to our industry and would love the opportunity to help you. Again thank you 2009 sponsors, for making the summer convention a success!



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We look forward to hearing from you!

Committee Breakfast sponsor.....



Title Insurance and Real Estate Litigation attorney Adam Kutinsky is a principal of the Kitch law firm and an active member of the MLTA. His practice focuses on complex title and escrow litigation, mortgage fraud, coverage disputes and construction lien foreclosure cases. Having successfully represented title underwriters, insureds and agents in hundreds of title claims throughout Michigan, he is totally committed to providing the highest quality of legal work in an aggressive, yet practical and efficient manner.

Mr. Kutinsky is also dedicated to keeping the MLTA and legal community abreast of current legal issues affecting title insurance and agents, having authored articles published by Michigan Lawyers Weekly, The State Bar of Michigan's Journal of Insurance and Indemnity Law, The State Bar of Michigan's Business Law Journal, the Oakland County Bar Association's legal journal Laches, and of course, the Title Examiner.

Mr. Kutinsky is based in Detroit, but the Kitch firm also has fully staffed offices in Chicago, Toledo, Mt. Clemens, Lansing, and the Upper Peninsula. You may reach Adam Kutinsky at 313.965.6731 or adam.kutinsky@kitch.com.



No Lazy Days of Summer in Washington

by Chuck Cain, Alliance Solutions, LLC

While summer usually brings doldrums to the federal government in Washington, this summer has brought anything but that.

In June, the Obama administration proposed the creation of the Consumer Financial Protection Agency. This agency, the creation of which is currently winding its way through Congress as HB 3126, would create a "czar" to administer enforcement of various laws (including TILA, RESPA and HOEPA) currently administered by a variety of federal entities including the Federal Reserve Bank and HUD. Among the concerns of various parties (including some administration officials) are that the "czar" of this agency would not be answerable to congress, differences in interpretation of existing laws between the new agency and its predecessors in enforcement and a perceived increase in federal regulation of settlement service providers including, potentially, attorneys and real estate brokers. The progress in creation of this agency will provide controversy for months to come.

In July the Federal Reserve Bank proposed sweeping changes to the Truth-in-Lending Act in a move argued to make the disclosures under the act more user friendly and inclusive of more actual closing costs. The sweeping changes would impact both closed-end mortgages and home equity lines of credit. It would also prohibit the payment of compensation to mortgage brokers and all loan officers based on loan pricing or rate. It would also require that "final" TIL disclosures be provided to borrowers no less than 3 days prior to closing. If there are errors on the "final" TIL it would require new disclosures and another 3 day waiting period prior to closing. There would also be greater coordination and standardization between RESPA and TILA disclosures.

The last issue raised above has led several groups to call on HUD to delay any implementation of the current pending RESPA changes until a final TILA proposal is enacted. It is argued that otherwise many of the changes to take effect on January 1, 2010 may need to be changed yet again to reflect the Fed's proposed changes. In late July federal court in the District of Columbia dismissed the challenge by the National Association of Mortgage Brokers to HUD's authority to implement the pending the RESPA changes. As such it should be presumed that the pending RESPA changes scheduled to take place on January 1 will take place. They might not, but one should be prepared. ☺

MLTA 2009 Fall Education Seminar

Wednesday, October 21, 2009; Comfort Inn & Suites, Mt. Pleasant
Wednesday, November 11, 2009; Radisson Hotel, Livonia

Agenda:

- | | |
|--------------------|---|
| 8:30 - 9:00 a.m. | Registration |
| 9:00 - 9:15 a.m. | Welcome, Opening Remarks and Announcements
<i>Tim McDonnell, MLTA President - Elect (at Mt. Pleasant)</i>
<i>Doug McFarlane, MLTA President (at Livonia)</i> |
| 9:15 - 9:25 a.m. | Lansing Report
<i>Tim Ward, Michigan Legislative Consultants</i> |
| 9:25 - 10:20 a.m. | Recording issues & Guidelines, a Register of Deeds Perspective
<i>Dan Grimshaw, Tuscola County Register of Deeds</i> |
| 10:20 - 10:35 a.m. | Break |
| 10:35 - 11:30 a.m. | Reverse Mortgages, A Title Perspective
<i>John Bommarito, Attorney's Title</i> |
| 11:30 - 12:00 p.m. | Lady Bird Deeds - Analysis & Underwriting Considerations
<i>Dawn Patterson, United General, division of First Am. Title Ins. Co.</i> |
| 12:00 - 1:00 p.m. | Lunch |
| 1:00 - 3:00 p.m. | The New RESPA Rules and HUD-1 Settlement Perparation
<i>Sarah Sutton, Fidelity National title Insurance Company</i> |



Comfort Inn, Mt. Pleasant



Livonia



TILA: Is There a Train Wreck in Your Future?

by Howard Lax, Attorney/Partner in firm of Lipson, Neilson, Cole, Seltzer & Garin, P.C.

This is part 1 of this topic, part 2 will be found in the Winter 2009 issue of the Title Examiner.

Part I: "I see dead closings."

I foresee transactions blowing up in everyone's face due to technical requirements of recently revised lending regulations. The Mortgage Disclosure Improvement Act (MDIA) required the Federal Reserve Board (the "Fed") to revise its Truth in Lending Act (TILA) regulations (Regulation Z) to provide more accurate disclosures to consumers in a timelier manner. This is a truly noble Act, until you look at the unintended consequences of the legislation. Like a pebble thrown in a pool, the ripples resulting from rule changes spread out in all directions, disturbing each person involved in a residential transaction.

MDIA requires early disclosures of loan terms for almost all closed end residential loans (not just purchase loans). No person may impose a fee on a consumer (except for the cost to obtain a credit history) before the lender provides estimated disclosures to the consumers. A revised disclosure must be delivered to consumers at least three business days prior to closing if the APR disclosed at the time of application is more than 0.125% lower than the actual terms offered to the borrower at closing. Interest rates are at historically low levels, and are bound to rise as the economy recovers. Hence, any uptick in interest rates just before closing may result in postponement of the closing to allow time for consumers to consider new disclosures.




This would not be bad if it happened once or twice. However, the entire mortgage market moves when Treasury bond interest rates move. Title agents may see all of their closings cancelled for the week, and a mad dash to stuff all of the closings in the following week. If this occurs at the end of the month crunch time, title agencies may be open later than bars. Rescheduling the closing also gives reluctant buyers and sellers an excuse to back out because the purchase agreement expired. Title agents may see their profit margins go up in smoke.

There were supposed to be ways around this train wreck. First, lenders can hedge against interest rate increases. Typically, the lender charges a lock fee at the time of application. This does not work anymore. MDIA requires the lender to provide estimated TILA disclosures before a rate lock fee or any other fee (except for a credit history fee) may be imposed. This disclosure must be provided in "good faith," meaning that the lender cannot prepare the disclosure until it receives an application for a loan. And, ixnay on the mortgage broker collecting a lock in fee. Nobody can impose fees until the lender provides estimated TILA disclosures. Likewise, a lender may not rush an application to closing to beat a rate increase. The consumer must be allowed to ponder the loan terms before closing. Hence, no closing may occur until seven business days after the lender sends the initial estimated TILA disclosures to the consumers.

The Fed did permit waivers of the initial seven business day waiting period, and the three business day waiting period after redisclosure, to allow an earlier closing in cases of "personal financial emergency." However, the Fed did not give us any guidance about emergencies that qualify for a waiver. Lenders are rejecting all waiver requests due to the lack of guidance. No lender is going to take the risk that some consumer will bite its hand by suing for a TILA violation. Hence, pleas that purchase agreements will expire, or that the kid's tuition is due, will fall on deaf ears.

Title agents are already seeing the riptides of the coming storm. Lenders now insist that title agents provide a firm list of all charges at least a week before closing. Lenders want to make sure that an increase in their fees or a small increase in rates does not trigger redisclosure requirements prior to closing. We expect lenders to change closing instructions to require title agents to warrant that no fees other than shown on the HUD-1 were imposed on the borrowers by any person at any time.

You need to be mindful of who a consumer is. A "consumer" includes the borrowers, and also any non-borrower who has a right to cancel a refinance transaction (i.e. someone who has an ownership interest and uses the home as a principal residence). If the non-borrower (someone on title who lives in the home) pays a fee to the mortgage broker before the lender receives the application, the lender will violate TILA by making the loan. Watch out for sellers and mortgage brokers who assert that they paid the appraisal fee, when the borrower paid it under the table. The closing instructions could make the title agent liable for losses due to the lender's unintentional error, simply because everyone lied to the title agent at the closing table. 

Interpreting the Phrase “Public Records” as it was Used in a Title Policy

by Mike Donovan, Chief Operating Officer / General Counsel, LaMont Title Corporation

The Michigan Court of Appeals has recently issued two opinions interpreting title insurance policies. In both cases, they ruled in favor of the title underwriter.

KANDASHA ANN GLENN v FIRST AMERICAN TITLE INSURANCE COMPANY, Michigan Court of Appeals case 285669

Approximately one week after Glenn purchased her home, the house was demolished pursuant to a demolition order issued by the City of Pontiac. Glenn discovered that the property had been listed on the city’s condemnation list, filed at the building and safety department, for about one year.

Her owner’s policy had an exclusion for loss, costs, attorney’s fees and expenses resulting from governmental police power, and the existence or violation of any ordinance, law or government regulation including those concerning building, zoning, land use, improvements on the land, land division, or environmental protection. The exclusion did not apply, however, if notice of the violation or enforcement appears in public records at the policy date.

In the Court of Appeals, Glenn argued that “public records” consist of records beyond those found in the Register of Deeds and that the notice of condemnation was a public record since it was on file with the City of Pontiac when the policy was issued. The Court disagreed, stating:

The policy defines “public records” as “records that give constructive notice of matters affecting your title, according to the state statutes where your land is located.” “Title” is defined as “the ownership of your interest in the land.” This

policy language is unambiguous: public records are those records that give notice to matters affecting title under state law. Further, in Michigan, the legislature has determined that the office of the county



Register of Deeds is the proper place to record documents that give constructive notice of matters affecting title to real property. As the trial court correctly noted, “drain commissioner records and circuit court judgments are public records in the colloquial sense, [but] they are not public records as defined by the title insurance policy.” Similarly, records of the condemnation proceedings are available to the public but are not “public records” pursuant to the policy as they do not relate to title to the property and are not filed in the office of the county Register of Deeds.

Glenn also argued that the title company was negligent

because it breached a duty to properly investigate the property. But the general rule of law is that the failure to properly perform a contractual duty does not give rise to an action in negligence unless the plaintiff alleges a violation of a duty separate and distinct from the duty imposed under the contract. Here, Glenn’s allegation of negligence was premised on the failure to discover and disclose the condemnation notice. However, defendant’s duty to provide title insurance and perform a title search was purely contractual. Plaintiff’s negligence claim does not seek to enforce a duty separate and distinct from the parties’ agreement. Accordingly, the trial court properly granted summary disposition of the negligence claim.

BRIAN J. LUDLOW v PATRICK R. HACKETT and THOMAS N. JAMES, Michigan Court of Appeals case 283189

In November 2003, Hendershot conveyed to Hackett and James, by warranty deed, “all of Block 16 . . . and ½ of the vacated Oak Street and the alley that connects Oak Street and Fir Street, and ½ of the vacated Fir Street from said alley to the lakeshore.” Hackett and James obtained a title insurance policy, but Schedule A only covered “all of Block 16,” with no mention of the vacated streets and alleys.

In September 2004, Hackett and James executed a warranty deed to Brian Ludlow which similarly conveyed Block 16, 1/2 of the vacated Oak Street and the alley that connects Oak Street and Fir Street, and ½ of the vacated Fir Street. In 2006, Ludlow sued Hackett and James, complaining that they misrepresented the status of their property ownership and breached the promises contained in the 2004 warranty deed. Ludlow claimed that the county had refused to allow him to develop Block 16 because questions existed regarding the ownership of the “vacated” streets mentioned in his deed.

Hackett and James in turn sued their title underwriter for its refusal to pay the policy’s coverage limit or offer a defense against Ludlow’s action. But the “Conditions and Stipulations” portion of the policy expressly defined “land” as follows:

The land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term “land” does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.

The Court of Appeals ruled that the sole reasonable interpretation arising from Schedule A and the definition of “land” is that the policy insures Hackett’s and James’s title to “all of Block 16,” but that “broadly and plainly removes from coverage “any rights, title, interest, estate or easement,” private or public, “in abutting streets road, avenues, alleys, [and] lanes”

Multihousing Real Estate Still Healthy In West Michigan

by Olivia Pulsinelli, Business Review West Michigan

BUSINESS REVIEW

One real estate sector that is actually performing better in West Michigan than the national average is multihousing properties, according to a recent report from CB Richard Ellis/Grand Rapids. "To me, it's a great time to own apartments in West Michigan," said Ed Mikolay, vice president and investment properties adviser at CBRE/Grand Rapids. The multihousing sector should provide investors a more stable cash flow than some other real estate investments right now, such as retail or office, Mikolay said. While those leases are for longer terms than multihousing, they might take a longer time to fill, he said.



Apartment buildings also are a good inflation hedge because of their short-term leases, Mikolay said. Owners can increase apartment rents every year or two to offset inflationary costs on the expense side. The supply and demand fundamentals for the multihousing market are aligning, Mikolay said. The second quarter 2009 CBRE report, which includes 109 market-rate multihousing properties throughout Kent County, consisting of more than 24,000 units, reported a 94 percent overall occupancy of properties in the greater Grand Rapids area. That beats both the national average of 92.7 percent and the 92 percent occupancy rate of the Detroit MSA.

The market-wide average rental rate also is significantly lower than both the national average and Detroit MSA, according to the report. The average adjusted rental rate in the report was \$599.96 per month. Mikolay said that overall, he believes the markets are going to stay pretty healthy. The CBRE report stated that many properties reported a decline in rental concessions. "It's hard to capture (declining concessions) in terms of trend analysis because it varies so widely, but if I were to generalize, that was an important finding that a lot of the concessions were reduced from where they were in the third or fourth quarter of last year and certainly from 12 months ago," Mikolay said. "Some of that is probably related to people who have unfortunately lost their homes, and the other part of it is people are just not buying houses ... and staying in apartments longer because of economic uncertainty."

Also, new construction is limited, and the high occupancy and fairly high rents in downtown Grand Rapids bodes well for some of the newer projects set for 2010, including Gallery on Fulton and Thirty-Eight, Mikolay said. Thirty-Eight has reported people already preleasing units, he said. And Icon on Bond, originally a condominium project, has only been leasing units for a couple of months, though Mikolay believes it is around 50 percent occupied. This indicates a demand for downtown rental property, he said. However, occupancy generally depends on the property class, said Michael Cagen, a senior associate at Marcus & Millichap in Grand Rapids and a member of the firm's National Multi Housing Group. Occupancy and the ability to grow rents has fluctuated quite a bit over the past couple of years, he said, though occupancies lately have been generally firm in class-B rentals and lower. The CBRE report confirms this trend, reporting 95.2 percent occupancy in class-B properties and 94.1 percent occupancy in class-C properties. Class-A properties, however, are at 87 percent occupancy, according to the report. "On higher-end rental property, I've been seeing a lot of owners experience a tenant loss because higher-end renters are often candidates to go buy foreclosed homes," Cagen said. "So they've been deserting some of the higher-end properties."

Similarly, the CBRE report said shadow space -- properties not intended for but moved into the rental pool -- is a concern. In the downtown market, Icon on Bond has already converted its units from condominiums to rental units, and other unsold condo projects could follow suit, adding more vacancies to the market. In the suburbs, investors are acquiring abandoned and foreclosed homes for cheap and renting them out at competitive rates.

The multihousing real estate market also has to deal with other challenges facing the state's economy, including unemployment and outward migration. A multihousing property owner in Ottawa County told Cagen that two out of every five tenants who leave the property give the owner out-of-state mailing addresses. "Which means 40 percent of their renters are leaving the state -- they're not going to competing property," Cagen said. "And as long as we have an outward migration of population from this state, we will continue to have a bit of pressure on multifamily owners."

The demographic category that is likely to generate apartment rentals-- young people or people who have lower incomes because they've been displaced or lost their jobs, for example -- are also the same demographic that is more likely to leave the state in search of greener pastures, Cagen said. Mikolay also believes that with high occupancy and markedly cheaper rents, there is potential for rents to move upward. It all depends on how many jobs can be created in the area, because job growth is the ultimate source of renters. "Unless and until we get job growth, that's probably going to hold the rents down," he said. "My feeling is there's probably room for rents to grow, but knowing the conservative nature of West Michigan business people, they're not going to push it too hard. They're going to try to keep the properties full."

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COVENANT DEEDS vs. WARRANTY DEEDS

By Allan G. Dick, Chief Executive Officer, Best Homes Title Agency LLC


We are often asked what is the difference between getting a Warranty Deed and a Covenant Deed, as is so commonly used in REO transactions.

It begins with the concept of “buyer beware”, which commonly has resulted in Purchase Agreements containing a typical requirement that the seller provide to the buyer a Warranty Deed. In getting a Warranty Deed, the buyer may hold the seller accountable for having delivered good, marketable title, subject only to those items disclosed on the Warranty Deed. If there are title problems or defects, which were not disclosed to the buyer, the buyer may hold the seller accountable – even if the seller didn’t know about them – because the seller “warranted” that he had good title to deliver.

In a Covenant Deed, the seller makes no such claim to having good, warrantable title – partly because (in many cases) the seller has never occupied the home, has only held title for a short time, didn’t receive a Warranty Deed (himself), and is therefore unwilling to make such a broad guarantee or warranty. What the seller does do is “covenant” against his own actions and knowledge, meaning he will defend against any lawful claims and demands from persons claiming by, through or under the grantor – but against no other persons. He is not “warranting” that he got good, marketable title in the first place, or that he is conveying good, marketable title.

That is where title insurance fits neatly into the picture. Even if you get a Warranty Deed as the buyer, if a title defect surfaces, what is your recourse? You may need to sue the seller (if you can find him, AND if he is collectable) to recover whatever loss you have suffered due to that defect. That can be a lengthy, confusing, and even expensive process. Who wants to risk that? So, the solution – even if you do receive a Warranty Deed – is to get title insurance. That way, if there is a title defect that surfaces after the transaction, the title company will cure the problem and/or reimburse the buyer for his loss – and then the title company may go after the seller. But, this way the buyer does not need to try to chase the buyer and hope he can recover his loss. He knows for certain the problem will be resolved.

Typically, title companies likewise require that the seller provide a Warranty Deed, so the title insurer can step into its insured’s shoes (called subrogation) and pursue the seller under his “warrants” to recover its costs, after it has had to pay a title claim. But, title companies have reluctantly accepted the fact that some sellers refuse to sign Warranty Deeds. And, if the title company has done a good of searching and examining the title, the title company should be able to minimize its risk in accepting the title transfer by Covenant Deed.

Even though Warranty Deeds are still the standard, Covenant Deeds have become the accepted norm for REO transfers. (In other states they use “Limited Warranty Deeds”, prohibited in Michigan by MCLA 750.275.) But, the beauty of this for the buyer is that the title company will insure and defend the title the same in either case. So, while the typical Purchase Agreement may call for a Warranty Deed, and that is what a buyer and the realtors normally anticipate, so long as there is title insurance covering the buyer, the use of a Covenant Deed is of no major consequence to the buyer. 



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Local Association	2009 Jul sales	2009 YTD Jul # Sales	2008 YTD Jul # Sales	09-08 YTD % Change	2009 YTD Jul Ave Price	2008 YTD Jul Ave Price	09-08 YTD % Change
Alpena, Alcona, Presque Isle Board of REALTORS®	34	148	169	-12.43%	\$90,351	\$90,747	-0.44%
Ann Arbor Area Board of REALTORS®	330	1,665	1,772	-6.04%	\$184,665	\$226,661	-18.53%
Antrim Charlevoix Kalkaska Association of REALTORS®	34	257	253	1.58%	\$123,035	\$164,362	-25.14%
Battle Creek Area Association of REALTORS®	130	754	717	5.16%	\$76,153	\$102,282	-25.55%
Bay County REALTOR® Association	142	797	747	6.69%	\$60,269	\$79,187	-23.89%
Branch County Association of REALTORS®	38	244	247	-1.21%	\$75,418	\$92,623	-18.58%
Central Michigan Association of REALTORS®	89	508	498	2.01%	\$80,414	\$85,514	-5.96%
Clare-Gladwin Board of REALTORS®	54	317	318	-0.31%	\$57,885	\$70,139	-17.47%
Dearborn Board of REALTORS®	243	1,509	1,051	43.58%	\$69,295	\$104,292	-33.56%
Detroit Board of REALTORS®	913	7,373	6,315	16.75%	\$11,596	\$19,313	-39.96%
Down River Association of REALTORS®	163	1,259	1,794	-29.82%	\$65,579	\$95,644	-31.43%
Eastern Thumb Association of REALTORS®	216	1,010	769	31.34%	\$77,422	\$113,778	-31.95%
Eastern U.P. Board of REALTORS®	36	176	181	-2.76%	\$82,038	\$96,814	-15.26%
Emmet Association of REALTORS®	44	234	287	-18.47%	\$171,394	\$297,973	-42.48%
Flint Area Association of REALTORS®	497	3,682	3,078	19.62%	\$69,451	\$91,525	-24.12%
Grand Rapids Association of REALTORS®	1040	6,605	5,999	10.10%	\$104,333	\$129,413	-19.38%
Greater Kalamazoo Association of REALTORS®	379	1,812	2,140	-15.33%	\$124,533	\$139,396	-10.66%
Greater Lansing Association of REALTORS®	557	3,020	2,977	1.44%	\$91,647	\$121,476	-24.55%
Hillsdale County Board of REALTORS®	30	225	273	-17.58%	\$63,858	\$82,318	-22.42%
Jackson Area Association of REALTORS®	187	1,178	1,038	13.49%	\$67,795	\$90,185	-24.83%
Lapeer & Upper Thumb Association of REALTORS®	157	470	359	30.92%	\$69,496	\$121,830	-42.96%
Lenawee County Association of REALTORS®	165	870	632	37.66%	\$79,800	\$105,228	-24.16%
Livingston County Association of REALTORS®	243	1,330	1,113	19.50%	\$146,808	\$190,399	-22.89%
Oakland	734	4,066	3,236	25.65%	\$116,988	\$160,824	-27.26%
Macomb	764	4,285	3,662	17.01%	\$92,746	\$133,079	-30.31%
Mason-Oceana-Manistee Board of REALTORS®	77	403	509	-20.83%	\$95,158	\$111,654	-14.77%
Midland Board of REALTORS®	77	413	442	-6.56%	\$128,530	\$155,169	-17.17%
Monroe County Association of REALTORS®	108	596	670	-11.04%	\$106,205	\$138,093	-23.09%
North Oakland County Board of REALTORS®	466	2,511	2,091	20.09%	\$109,981	\$159,390	-31.00%
Northeastern Michigan Board of REALTORS®	55	248	273	-9.16%	\$73,143	\$92,285	-20.74%
Paul Bunyan Board of REALTORS®	131	696	645	7.91%	\$69,838	\$88,529	-21.11%
Saginaw Board of REALTORS®	185	1,077	990	8.79%	\$69,320	\$89,640	-22.67%
Shiawassee Regional Board of REALTORS®	59	364	341	6.74%	\$68,422	\$80,924	-15.45%
Southwestern Michigan Association of REALTORS®	240	1,296	1,453	-10.81%	\$139,299	\$182,008	-23.47%
St. Joseph County Association of REALTORS®	82	400	324	23.46%	\$77,761	\$112,688	-30.99%
Traverse Area Association of REALTORS®	198	1,008	1,039	-2.98%	\$168,894	\$200,733	-15.86%
Upper Peninsula Association of REALTORS® *	177	882	1,019	-13.44%	\$93,196	\$98,740	-5.61%
Water Wonderland Board of REALTORS®	119	644	541	19.04%	\$87,309	\$112,743	-22.56%
West Central Association of REALTORS®	100	582	611	-4.75%	\$70,667	\$90,900	-22.26%
West Michigan Lakeshore Association of REALTORS®	374	2,074	2,214	-6.32%	\$108,242	\$140,976	-23.22%
Western Wayne Oakland County Association of REALTORS®	1178	6,188	5,090	21.57%	\$120,613	\$169,569	-28.87%
TOTALS	10845	63,176	57,877	9.16%	\$93,648	\$122,660	-23.65%

*Escanaba, Iron Mountain, Keweenaw, Western Upper Peninsula, and North Central Upper Peninsula

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Distribution of Proceeds


by Lisa A. Tyler, National Escrow Administrator



How do you "undo" a prohibited payment made at closing? Specifically, a disbursement made against the closing instructions provided by the lender? Read "Distribution of Proceeds" to learn how one escrow officer learned a valuable lesson about making distributions to unrelated parties in a sales transaction involving divorced sellers.

It is our duty to protect the Company from fraud and forgery and the only way to uphold that duty is to equip our offices with fraud fighting tools. In this issue read "Fraud Fighter Quick Tips" to discover the new ways the UV-16 Fraud Fighter device can help save your office from accepting counterfeit treasury checks and money orders.

The Company implements its policies and procedures through the issuance of Technical Memoranda and the eScrow eManual. Typically, these items are distributed as a direct result of the latest issues and trends in our industry. But we don't stop there! At our live training events, we elaborate on these policies and procedures by sharing with you the very latest "behind the scenes" stories that led to such policies and procedures. Lastly, we publish these stories in an effort to "get the word out." Often we receive submissions from settlement employees asking us to share with you the lessons they have learned so you too don't have to learn the hard way. The article entitled "Divorce Breeds Nasty Desire" is a perfect example of such a story.

This month's Fraud Insights is already packed full of information, so what else could possibly be learned? When you read "Distribution of Proceeds" and "Divorce Breeds Nasty Desire," you will learn we are only human and we all make mistakes, but how we recover from those mistakes is the real test. In these stories there was no time to waste and the faster the settlement agent responded and worked on the issues, the better the outcome for our Company. In both of those instances, as well as many other stories not published here, it took several levels of management involvement and teamwork to come to a resolution. If you do make a mistake, immediately bring it to the attention of your management so you can formulate a plan in an effort to lessen the risk and loss to the Company. 



New Foreclosure Requirement: Pre-Foreclosure Counseling and Opportunity for Modification

by John C. Bommarito, Corporate Counsel, Attorneys Title Agency

Governor Jennifer Granholm recently signed a new Michigan law modifying foreclosure and loan modification rights. These public acts are 2009-PA-0029, 2009-PA-0030, 2009-PA-0031 and are designed to help financially distressed homeowners beginning on May 21, 2009. The new foreclosure law took effect on July 5, 2009. The new law requires a mandatory 90-day pre-foreclosure process to allow the borrower and the mortgage holder to work together to avoid foreclosure. The 90-day pre-foreclosure process applies to mortgages where lenders have not yet commenced foreclosure prior to July 5, 2009. As enacted, the new statute is set to expire on July 5, 2011 if no further legislative action is taken. This new law applies only to property claimed as a principal residence exempt from tax under section 7cc of the general property tax act. It does not apply if pursuant to these provisions the borrower and the mortgage holder previously agreed to modify the mortgage loan and for less than a year the borrower failed to comply with the terms of the loan modification.


Before beginning proceedings to foreclosure by advertisement, a mortgage holder or servicer must comply with a 90-day pre-foreclosure process to attempt to avoid foreclosure. The mortgage holder or servicer first must serve a written notice on the borrower informing the borrower of his or her rights and the opportunity to avoid foreclosure. The mortgage holder or servicer must mail the notice by regular first-class mail and by certified mail, return receipt requested, with delivery restricted to the borrower, both sent to the borrower's last known address as well as notice the borrower by publication within 7 days of mailing the notice.

Under the new Public Acts there are specific requirements regarding the information which must be contained in the notice that is sent to the borrower. The pre-foreclosure notice must contain the following: 1) the reason(s) for default and amount due and owing; 2) the names, addresses, and telephone numbers of the mortgage holder, mortgage services, or any agent designated by either the holder or servicer; 3) a designation of which aforementioned party is the contact and has the authority to enter into modification agreements; 4) a list of housing counselors (names, addresses and telephone numbers) prepared by the Michigan state housing development authority; and 5) that the borrower has the right to consult with an attorney and the telephone numbers of the State Bar of Michigan lawyer referral service and any local legal aid office.

Included in the duties of the borrower, is the affirmative duty to act within 14 days if the borrower desires to invoke the protections provided by this new law and participate in loan modification negotiations.

If the borrower and lender (or its designee) have previously modified the mortgage and the borrower has not complied with the terms of said modification, then this law does not apply. It will apply however if the borrower has complied with a prior loan modification for one year.

If the borrower and lender (or its designee) do not reach an agreement to modify the loan, but the borrower meets the criteria for a modification, judicial foreclosure is required.

Underwriter requirements for this new law will likely center around obtaining sufficient evidence to establish compliance with the new laws by the foreclosing party before commencing the foreclosure process. Sufficient evidence could be an affidavit from the lender or their counsel attesting that the requirements set forth in MCL 600.3204(4) and 600.3205a were complied with. Of course title agents are reminded to check with their individual underwriters for both requirement language and what constitutes sufficient evidence. It is also advisable to confirm that these new requirements were met not only when working on a product but also on an REO transaction as well. 

MIND CAPTURE MARKETING

by Tony Rubleski - President, Mind Capture Group



I recently had the rare opportunity to interview marketing legend Jay Abraham out of LA who charges \$5000 per hour to dispense marketing advice and it got me thinking back to one of my favorite quotes from him that we discussed:

“The market place is silently begging to be lead.”

After I hung the phone up with Jay I had many thoughts cross my mind. One key commonality that I noticed we both shared was the use of great content to educate, inform and serve our customers and key prospects. I went back to chapter nine from the second Mind Capture book titled, ‘Content is King’, to drill down deeper and explain how and why using great content in your marketing efforts will pay off in multiples when used properly.

In relation to great content, understanding the term repurposing and why it’s important to grasp and understand is critical to helping you improve profits and results within your organization and from existing and prospective clients.

Here’s my definition of repurposing:

“Taking an existing product, service, or offer and making it available in a new format or combination to extend the life cycle, and add value to the customer with the end goal to differentiate and increase profits.”

What industries do it?

Two industries that come to mind which have had to adapt to changes and incorporate repurposing based on a combination of competitive pressure, consumer wants and breakthroughs in technology are the music and movie businesses. Let’s take a brief look at each of them and the learning lessons we can apply to our own enterprises.

#1. The recording industry. The evolution of the music industry is the latest business under going massive repurposing. Just a few short years ago the two primary formats available for purchasing music were the audio cassette and CD. Today, people barely remember cassettes, and the same is quickly happening with CD’s. The new format of choice is digital downloadable music. Does the word Napster ring a bell? This online file sharing service started the rapid progression and eventual acceptance of purchasing music online via downloads versus buying physical CD’s. The industry hasn’t been the same since.

We’re a mobile society these days and Internet technology is standard issue and common place within most civilized countries. The recording industry has been forced kicking and screaming to repurpose and reinvent itself quickly, or frankly see sliding profits and changes in demand make it extinct.

#2. The movie business. The first big repurpose for Hollywood was the birth of the home video in the early 1980’s. Now, your favorite movie could be watched in your home as many times as you wanted, without having to go the theatre or waiting for it to appear on television. The business model changed based on innovation via new formats, technology and in the last 10 years in particular, the huge increase in entertainment options fighting for ‘Mind Capture’ and discretionary income.

Now a movie hits the theatre and within a few months it’s quickly repurposed into special double, DVD sets complete with outtakes and extras to add fresh sizzle to the steak. The focus is to repurpose it with a few extra bells and secondary marketing push to capture those who missed it in the theatre or simply waited to rent it or buy the DVD version.

Here are a couple of lessons learned from these two industries about the power of repurposing:

First, you must be aware of the changes in technology and how it can give you a marketing advantage if possible. To ignore it is to risk putting your organization on the path to flat lined profits and possibly the edge of extinction due to apathy, laziness or denial. Repurposing content or product packages is a smart strategy to be thinking about and implementing within your organization.

Here’s the good news: You have a choice to keep growing by staying current, reading newsletters such as this, sharing best practices with peers and finding additional resources to aid you. In the age of Google you can find just about anything 5-10 minutes. You don’t have to do it all on your own.

Secondly, these industries are forced to think and listen to what the market place and their customers are saying. Yes, the lost art of listening to customers is thankfully alive and well. They know if they don’t gather feedback, watch the competition and make new options, or combinations available via repurposing that they stand to lose customers, repeat business and the reward of profits that come with it.

Your mission, should you choose to accept it: Examine your present business, listen to your customers, and continually be on the lookout for ways to repurpose what you provide to add more value.

Tony Rubleski is a bestselling author and currently the president of Mind Capture Group based in Spring Lake, MI. For more information and resources visit www.MindCaptureGroup.com.



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MLTA Upcoming Events

2009

- October 21 **Fall Education Seminar**
**Comfort Inn - New Location
Mt. Pleasant*
- November 11 **Fall Education Seminar**
Radisson Hotel, Livonia
- February 9 **MLTA Lobby Day**
*Lunch at the Capital
Meet with your Legislators*

2010

- July 18-20 **MLTA Summer Conference**
*Bay Harbor Resort & Marina
Bay Harbor, MI*



MLTA Events

- October 21-24 **2009 Annual Convention**
*The Breakers
Palm Beach, Florida*

MLTA Code of Ethics

One of the fundamental components to the freedoms we enjoy as Americans is the ability to freely alienate and transfer interests in real property. It is upon this principle that we exist as an industry, we interact with affiliated organizations in real estate transactions and, in concert with these other affiliated organizations, we enhance and improve the quality of life enjoyed by our society. Title insurance has become an integral and primary force in this process.

In response to that role, and in conjunction with the Michigan Land Title Association Mission Statement and Vision Statement, the Association hereby acknowledges its' responsibility to promote these ideals by establishing this Code of Ethics to support its' members in achieving the highest standards of sound and ethical business practices.

Now, therefore, in furtherance of the above-stated principles,
it is the charge and responsibility of each and every member of the
Association to:

Serve the public by providing the highest quality land title evidencing, title assurance and settlement services possible.

Strive to continually increase and improve their business knowledge by availing themselves of educational opportunities offered by the Association or other related professional organizations.

Conduct their business at all times in a manner designed to promote the integrity and professional reputation of the title insurance industry.

Advocate and support legislation and regulations designed to promote a system of public land records, which enhances the ability of the public to transfer interests in real property.